1424-97

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

No. 176.

EUGENE C. GORDON, PLAINTIFF IN ERROR,

vs.

THE THIRD NATIONAL BANK OF CHATTANOOGA, TENNESSEE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ALABAMA.

FILED OCTOBER 8, 1888.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 27, 1891.

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1 THE UNITED STATES OF AMERICA,
Northern District of Alabama, Northern Division.

Pleas had at a regular term of the circuit court of the United States of America for the northern division of the northern district of Alabama, begun and held at the United States court-rooms, in the city of Huntsville, in said district, on the first Monday of April (it being the second day thereof), in the year of our Lord one thousand eight hundred and eighty-eight, and of the Independence of the United States the one hundred and twelfth year.

Present: The Hon. Harry T. Taulmin, judge of the district court of the United States for the southern district of Alabama, presiding; Arthur H. Keller, marshal, by his deputy, George P. Turner, and A. W. McCullough, clerk.

2 *Complaint.*

In the United States Circuit Court, Northern Division of the Northern District, State of Alabama.

THIRD NATIONAL BANK, CHATTANOOGA, TENN., Pl'ff,
vs.
E. C. GORDON, D'f'd't.

The pl'ff, a corporation duly and legally organized, in accordance with the laws of the Government of the United States of America, under the style and name of "The Third National Bank of Chattanooga," in the State of Tennessee, doing business as bankers in the city of Chattanooga, in the State of Tennessee, whose directors are John A. Hart, D. E. Rees, W. H. Hart, Jno. D. Ewing, J. P. Smartt, M. J. D. Brice, Sam'l R. Reed, J. T. Hill, Creed F. Bates, S. A. Key, W. M. Nixon, W. E. Baskette, and John H. Parker, with Jno. A. Hart, president; D. E. Rees, 1st vice-president; W. H. Hart, 2nd vice-president; W. E. Baskette, cashier, and C. R. Casgill, assistant cashier, claims of the defendant, E. C. Gordon, who resides in the county of Limestone, State of Alabama, in the northern division of the northern district for State of Alabama, the sum of five thousand dollars, with interest at the rate of six per cent. per annum, as evidenced by the following written instruments in words & figures as follows, to wit:

"$2,500.00. CHATTANOOGA, TENN., *Feb.* 15, 1887.

Sixty days after date I promise to pay to the order of myself twenty-five hundred dollars at 3rd Nat'n'l Bank, Chattanooga, Tenn., value received. E. C. GORDON."

3 Demand protest and notice of protest waived, and payment guaranteed within five days from date of maturity.
E. C. GORDON.
D. G. CRUDUP & CO.

"$2,500.00. CHATTANOOGA, TENN., *Feb.* 15, 1887.

Ninety days after date I promise to pay to the order of myself twenty-five hundred dollars at 3rd Nat'n'l Bank, Chattanooga, Tenn., value received.

E. C. GORDON.

Demand protest — notice of protest waived, and payment guaranteed within five days from date of maturity.

E. C. GORDON.
D. G. CRUDUP & CO.

The said D. G. Crudup & Co. are not sued in this action.

And the plaintiff avers that the said E. C. Gordon endorsed each of the above-described written instruments, the said promissory notes; that said promissory notes are now the property of pl'ff, and that written notice of the maturity of each of said notes was given by the pl'ff to the defendant, and payment was refused.

And the pl'ff claims of the defendant five thousand dollars and interest thereon at the rate of six per cent. per annum due by two promissory notes made by the defendant on the 15th day of February, 1887—the first for $2,500, payable sixty days after date, to the order of the defendant, at the 3rd Nat'n'l Bank, Chattanooga, Tenn., and endorsed by the defendant; the second note for $2,500.00, executed by the defendant on the 15th Feb., 1887, payable ninety
4 days after date, to the order of the defendant, at the 3rd Nat'n'l Bank of Chattanooga, Tenn., and endorsed by the def't, which two promissory notes, with the damages and interest thereon, are still unpaid.

And the pl'ff further claims of the defendant the sum of five thousand dollars as the assignee of two promissory notes executed on the 15th day of February, 1887, each for $2,500.00, payable in sixty and ninety days, at the 3rd Nat'n'l Bank, Chattanooga, Tenn., with interest, which two notes are due and unpaid.

And the pl'ff further claims of said d'f'd't the sum of five thousand dollars, on account stated between the pl'ff and d'f'd't on or about the 15 of May, 1887.

Also the pl'ff claims of the d'f'd't the sum of five thousand dollars for money paid by the pl'ff for the defendant on the 15th of February, 1887, or soon thereafter, at his request. The pl'ff also claims of the d'f'd't the sum of five thousand dollars for money on the 15 day of February, 1887, secured by the defendant to the use of the pl'ff; also five thousand dollars for money loaned by the pl'ff to the d'f'd't on the 15th of February, 1887; also the pl'ff claims of the defendant the sum of five thousand dollars for merchandise, goods, and chattels sold by pl'ff to d'f'd't on the 15th Feb., 1887, which sums of money, with interest thereon at the rate of six per cent., are now due and unpaid.

WILLIAM RICHARDSON,
Att'y for Pl'ff.

5 Endorsed: No. 1444. Third Nat'n'l Bank, Chattanooga, Tenn., *vs.* E. C. Gordon. Original complaint. Filed in clerk's

office this 16th day of February, A. D. 1888. A. W. McCullough, clerk.

Summons.

UNITED STATES OF AMERICA:

Circuit Court of the United States for the Northern District of Alabama, Northern Division.

The President of the United States of America to the marshal of said district, Greeting:

You are hereby commanded to summon E. C. Gordon, who is a citizen of the State of Alabama, to appear before the hon. circuit court aforesaid, at the place of holding said court, at Huntsville, on the first Monday of April next, to answer the complaint of The Third National Bank of Chattanooga, who is a citizen of the State of Tennessee; and have you then and there this writ.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this second Monday of October, in the year of our Lord one thousand eight hundred and eighty-seven.

Seal Circuit Court U. S., N. D. of Alabama.

Issued the 16th day of February, in the year of our Lord one thousand eight hundred and eighty-eight.

Attest: A. W. McCULLOUGH,
Clerk U. S. Circuit Court, Northern District of Ala.

Endorsed: No. 1444. Circuit court of the United States, northern district of Alabama, northern division. Summons and complaint. The Third National Bank of Chattanooga *vs.* E. C. Gordon. Original. Issued this 16th day of Febr'y, 1888. A. W. McCullough, clerk.

Marshal's Return.

6 Executed by serving a copy of the within summons and complaint on defendant, E. C. Gordon, at Decatur, on the 17th Febr'y, '88.

A. H. KELLER,
U. S. Marshal,
By GEO. P. TURNER, *Deputy.*

Returned and filed this 18th day of February, 1888.
A. W. McCULLOUGH, *Clerk.*

Demurrer to Complaint.

In the United States Circuit Court, Northern Division, of the Northern District of the State of Alabama.

3D NATIONAL BANK OF CHATTANOOGA, TENN.,
vs.
E. C. GORDON.

The said defendant, by attorney, comes and demurs to the declaration of the plaintiff in said cause & to each count thereof separately for the following reasons, to wit:

1st. Because it does not set out the instruments sued on according to their legal effect.

2d. Because it does not aver that said defendant ever ordered said instruments sued on to be paid to plaintiff or any one else.

3d. Because it does not aver that said instruments sued on were ever delivered to the plaintiff or any one else.

4th. Because it does not aver any right of action in plaintiff on said instruments.

5th. Because said declaration is too vague, indefinite, and uncertain to enable defendant to prepare his defense thereto.

Wherefore he prays judgment.

YOUNG & BARR,
Att'ys for D'f't.

Endorsed: No. 1444. 3d National Bank *vs.* E. C. Gordon. Demurrer to declaration. Filed in clerk's office this 2nd day of April, A. D. 1888. A. W. McCullough, clerk.

7 *Defendant's Pleas.*

In the United States Circuit Court in and for the Northern Division of the Northern District of the State of Alabama.

THE THIRD NATIONAL BANK OF CHATTANOOGA, TENN.,
vs.
E. C. GORDON.

1. The said defendant, for plea in this behalf, by attorney, comes and says he did not undertake and promise in manner and form as set forth in the said several counts in plaintiff's declaration or any or either of them; and of this he puts himself upon the country.

YOUNG & BARR,
Att'ys for Defendant.

2. And, for further plea in this behalf, defendant, by attorney, comes and says that the plaintiff is not the assignee of the notes sued upon as set forth in plaintiff's declaration; and of this he puts himself upon the country.

YOUNG & BARR,
Att'ys for Defendant.

3. And for further plea in this behalf, by leave of the court first had and obtained, said defendant says that the said notes sued on were executed by him solely and alone for the accommodation of the said D. G. Crudup & Company, of which said plaintiff then and there had notice; yet, notwithstanding thereof, the said plaintiff, although the said D. G. Crudup & Company, a partnership firm composed of D. G. Crudup & J. H. Tabler, were at the time of the execution of said notes, are now, and ever since have been citi-

8 zens of the said city of Chattanooga, county of Hamilton and State of Tennessee, and possessed of large property and effects, out of which the money due upon said notes could have been collected, and they were primarily liable thereon and therefor, have in-

dulged them, the said D. G. Crudup and Company, and extended the time of the payment of said notes from the maturi-y thereof to September the 2d, 1887, and thence to the 2d day of September, A. D. 1888, for a valuable consideration, to wit, a mortgage on lots 13, 14, & 15 in Bluff View addition to the said city of Chattanooga, together with some valuable land company stock, as collateral security for the payment of said notes, without the procurement, knowledge, or consent of the said defendant; and defendant avers that the said D. G. Crudup and Company have since become and are now wholly insolvent. Wherefore defendant says if he was ever liable on said notes in consequence of the foregoing he is in law and equity relieved and released from such liability; all of which he is ready to verify, &c.

YOUNG & BARR,
Att'ys for Defendant.

4. And for further plea in this behalf, by leave as aforesaid, the said defendant says that the said plaintiff, for a valuable consideration, before the commencement of said suit, agreed to extend and did extend the time of the payment of the said money sued
9 for in said declaration until the 2d day of September, 1888. And defendant avers that by reason thereof said suit is prematurely brought; all of which defendant is ready to verify.

Wherefore he prays judgment, &c.

YOUNG & BARR,
Att'ys for Defendant.

5. And for further plea, by leave as aforesaid, defendant, by attorney, comes and says he did not endorse said notes in manner & form as the said plaintiff has set forth in his said declaration; and of this he puts himself upon the country.

YOUNG & BARR,
Att'ys for D'f't.

6. And for further plea in this behalf, by leave as aforesaid, defendant says that long after the maturity of the notes sued on, which were executed without other consideration than that of accom-odation paper for the use of said D. G. Crudup & Co., of which plaintiff then and there had notice, the said D. G. Crudup and Company, by deed of general assignment for the benefit of all their creditors and for the payment of said notes, conveyed a large amount of personal property, real property, and choses in action to W. E. Baskette & T. H. Ewing as trustees, with full and ample powers to collect, sell, and dispose of said property and pay off all their indebtedness, including said notes, and that thereafter
10 the said plaintiff, with notice aforesaid and without the knowledge or consent of said defendant, agreed with the said D. G. Crudup and Company, in consideration, among other things, of enabling the said D. G. Crudup and Company to effect a general compromise with all their other creditors, to waive its right to have the payment of said notes made by the said trustees under said

general deed of assignment, notwithstanding the property aforesaid so conveyed was of sufficient value and could have been disposed of by said trustees for an amount largely in excess of what would have been necessary to have satisfied and discharged all of their indebtedness, including the said notes sued upon.

Wherefore, and by reason of the premises, defendant avers he was and is released from further liability upon said notes; all of which defendant is ready to verify.

Wherefore he prays judgment, &c.

YOUNG & BARR,
Att'ys for Defendant.

7. And for further plea in this behalf, by leave as aforesaid, the said defendant, by attorney, says that the said notes sued on were executed by him solely for the accom-odation of the said D. G. Crudup & Co.; yet, notwithstanding this fact, and that the said plaintiff knew thereof, it indulged the said D. G. Crudup & Co. and extended the time of the payment of said notes to the 2d day
11 of September, 1888, for a valuable consideration, to wit, a mortgage on lots 13, 14, & 15 in Bluff View addition to the city of Chattanooga, in county of Hamilton & State of Tennessee, together with some land company stock, as collateral security for the payment of said notes, without the procurement, knowledge, or consent of defendant; and therefore, by reason thereof, defendant avers that he is released from any liability whatever in the premises; all of which he is ready to verify.

Wherefore he prays judgment, &c.

YOUNG & BARR,
Att'ys for D'f't.

Endorsed: No. 1444. 3d National Bank, Chattanooga, Tenn., *vs* E. C. Gordon. Defendant's pleas. Filed 4th day of April, A. D. 1888. A. W. McCullough, clerk.

Minute Entry: Allowing Withdrawal of Pleas.

April 12th, A. D. 1888. Minute Book G, page 168.

THE THIRD NATIONAL BANK OF CHATTANOOGA
vs.
E. C. GORDON. } 1444.

Come the parties, by their attorneys, and the defendant asks leave to withdraw his pleas filed herein, which leave is by the court granted.

Minute Entry: Overruling Demurrer to Complaint.

April 13th, A. D. 1888. Minute Book G, page 172.

THE THIRD NATIONAL BANK OF CHATTANOOGA
vs.
E. C. GORDON. } 1444.

Come the parties, by their attorneys, and this cause being heard upon defendant's demurrer to plaintiff's complaint, filed herein,

after argument of counsel and due consideration it is by the
12 court considered that said demurrer be, and the same is hereby, overruled.

Defendant's Pleas.

In the United States Circuit Court in and for the Northern Division of the Northern District of the State of Alabama.

THE THIRD NATIONAL BANK OF CHATTANOOGA, TENN., }
vs.
E. C. GORDON. }

1. The said defendant, for plea in this behalf, by attorney, comes and says he did not undertake and promise in manner and form as set forth in the said several counts in plaintiff's declaration or any or either of them; and of this he puts himself upon the country.

YOUNG & BARR,
Att'ys for Defendant.

2. And for further plea in this behalf defendant, by attorney, comes and says that the plaintiff is not the assignee of the notes sued upon as set forth in plaintiff's declaration; and of this he puts himself upon the country.

YOUNG & BARR,
Att'ys for Defendant.

3. And for further plea in this behalf, by leave of the court first had and obtained, said defendant says that the said notes sued on were executed by him solely and alone for the accom-odation of the said D. G. Crudup & Company, of which said plaintiff then and there had notice; yet, notwithstanding thereof, the said plaintiff, although the said D. G. Crudup & Company, a partnership
13 firm composed of D. G. Crudup & J. H. Tabler, were at the time of the execution of said notes, are now, and ever since have been citizens of the said city of Chattanooga, county of Hamilton and State of Tennessee, and possessed of large property and effects out of which the money due upon said notes could have been collected and they were primarily liable thereon and therefor, *have* indulged them, the said D. G. Crudup and Company, and extended the time of the payment of said notes from the maturity thereof to September the 2d, 1887, and thence to the 2d day of September, A. D. 1888, for a valuable consideration, to wit, a mortgage on lots 13, 14, & 15, in Bluff View addition to the said city of Chattanooga, together with some valuable land company stock as collateral security for the payment of said notes, without the procurement, knowledge, or consent of the said defendant; and defendant avers that the said D. G. Crudup and Company have since become and are now wholly insolvent. Wherefore defendant says if he was ever liable on said notes in consequence of the foregoing he is in law and equity relieved and released from such liability; all of which he is ready to verify, &c.

YOUNG & BARR,
Att'ys for Defendant.

4. And for further plea in this behalf, by leave as aforesaid, the said defendant says that the said plaintiff, for a valuable consideration, before the commencement of said suit, agreed to extend and did extend the time of the payment of the said money sued for in said declaration until the 2d day of September, 1888.

And defendant avers that by reason thereof said suit is prematurely brought; all of which defendant is ready to verify. Wherefore he prays judgment, &c.

YOUNG & BARR,
Att'ys for Defendant.

5. And for further plea, by leave as aforesaid, defendant, by att'y, comes and says he did not endorse said notes in manner and form as the said plaintiff has set forth in *his* said declaration; and of this he puts himself upon the country.

YOUNG & BARR,
Att'ys for D'f't.

6. And for further plea in this behalf, by leave as aforesaid, defendant says that long after the maturity of the notes sued on, which were executed without consideration than that of accom-odation paper for the use of said D. G. Crudup & Co., of which plaintiff then and there had notice, the said D. G. Crudup and Company, by deed of general assignment for the benefit of all their creditors and for the payment of said notes, conveyed a large amount of personal property, real property, and choses in action to W. E. Baskette & T. H. Ewing, as trustees, with full and ample powers to collect, sell, and dispose of said property and pay off all their indebtedness, including said notes, and that thereafter the said plaintiff, with notice aforesaid and without the knowledge or consent of said defendant, agreed with the said D. G. Crudup and Company, in consideration, among other things, of enabling the said D. G. Crudup and Company to effect a general compromise with all their other creditors, to waive its right to have the payment of said notes made by the said trustees under said general deed of assignment, notwithstanding the property aforesaid so conveyed was of sufficient value and could have been disposed of by said trustees for an amount largely in excess of what would have been necessary to have satisfied and discharged all of their indebtedness, including the said notes sued upon.

Wherefore and by reason of the premises defendant avers he was and is released from further liability upon said notes.

All of which defendant is ready to verify. Wherefore he prays judgment, &c.

YOUNG & BARR,
Att'ys for Defendant.

7. And for further plea in this behalf, by leave as aforesaid, the said defendant, by attorney, says that the said notes sued on were

executed by him solely for the accom-odation of the said D. G. Crudup & Co., yet, notwithstanding this fact and that the
16 said plaintiff knew thereof, it indulged the said D. G. Crudup & Co. and extended the time of the payment of said notes to the 2d day of September, 1888, for a valuable consideration, to wit, a mortgage on lots 13, 14, & 15, in Bluff View addition to the city of Chattanooga, in county of Hamilton & State of Tennessee, together with some land company stock as collateral security for the payment of said notes, without the procurement, knowledge, or consent of defendant; and therefore by reason thereof defendant avers that he is released from any liability whatever in the premises; all of which he is ready to verify. Wherefore he prays judgment, &c.

YOUNG & BARR,
Att'ys for D'f't.

Endorsed: No. 1444. 3d National Bank, Chattanooga, Tenn., *vs.* E. C. Gordon. Defendant's pleas. Filed April 13th, 1888. A. W. McCullough, clerk.

And for further plea in this behalf said defendant says that after the execution of the notes sued on and the endorsement of the same in blank by him and D. G. Crudup & Company the words "demand, protest, and notice of protest waived and payment guaranteed within five days from date of maturity" were written or printed above his signature of endorsement on the back of said instrument without his knowledge or consent; and defendant avers that by reason
17 thereof said instruments were and are materially altered, and in consequence thereof have become and are void in law; all of which he is ready to verify. Wherefore he prays judgment, &c.

E. C. GORDON.

Endorsed: No. 1444. 3d Nat'l Bank of Chattanooga *vs.* E. C. Gordon. Filed in open court April 13th, 1888. A. W. McCullough, clerk.

Demurrer to Pleas.

Comes the pl'ff, by att'y, and demurs to all of the allegations and statements of said pleas as relate to another and a different consideration executed by Tabler, Crudup & Co., and for grounds of demurrer says:

1st. That in law such a consideration cannot alter or affect the notes sued on in this action.

2d. That recovery on accomodation paper in the hands of an innocent purchaser before maturity cannot be defeated by any transfer, assignment, or consideration made by Tabler, Crudup & Co.

3d. That the notes sued on are for a specific amount, and the recovery on the same cannot be defeated by any subsequent transaction of Tabler, Crudup & Co. after the same passed into the hands of the pl'ff in good faith, for a valuable consideration, and before the ma-

turity of said notes, the same having been made payable to the maker and by him endorsed.

WILLIAM RICHARDSON,
Att'y for Pl'ff.

18 Endorsed: No. 1444. Third National Bank *vs.* E. C. Gordon. Demurrer to pleas. Filed in open court April 13th, A. D. 1888. A. W. McCullough, clerk.

Minute Entry: Overruling Demurrer to Pleas.

April 13th, A. D. 1888. Minute Book G, page 173.

THE THIRD NATIONAL BANK OF CHATTANOOGA
vs.
E. C. GORDON. } 1444.

Come the parties, by their attorneys, and this cause being heard upon plaintiff's demurrer to defendant's pleas, filed herein, after argument of counsel and due consideration it is by the court considered that said demurrer be, and the same is, hereby overruled.

Issue Joined.

Comes the pl'ff, by attorney, and joins issue on above plea.

WILLIAM RICHARDSON,
Att'y for Pl'ff.

Minute Entry: Beginning of Trial.

April 13th, A. D. 1888. Minute Book G, page 173.

THE THIRD NATIONAL BANK OF CHATTANOOGA
vs.
E. C. GORDON. } 1444.

Come the parties, by their attorneys; comes also a jury of good and lawful men, to wit, Peter M. Dax and eleven others, who are duly elected, empaneled, and sworn to well and truly try the issues joined and a true verdict render according to the evidence, and the trial of this cause proceeds.

During the argument of counsel, the usual hour of adjournment having arrived, it is ordered by the court that the further trial of this cause be continued until to-morrow morning at nine o'clock.

19 *Minute Entry: Judgment for Plaintiff.*

April 14th, A. D. 1888. Minute Book G, page 174.

THE THIRD NATIONAL BANK OF CHATTANOOGA
vs.
E. C. GORDON. } 1444.

This being the day and hour to which the further trial of this cause was, on yesterday, continued, come again the parties, by their

attorneys; come again the jury who were duly elected, empaneled, and sworn herein as aforesaid, and the trial of this cause proceeds.

After having heard the evidence by the parties adduced, arguments of counsel, and charge of the court the jury retire to their room to consider of their verdict, and afterward return into court and render their verdict in writing, signed by their foreman, and upon their oath do say:

"We, the jury, find for the plaintiff and assess the damages at the sum of five thousand two hundred and eighty-six and $\frac{67}{100}$ dollars.

"PETER M. DAX, *Foreman.*"

It is therefore considered by the court that the plaintiff have and recover of the defendant said sum of five thousand two hundred and eighty-six and $\frac{67}{100}$ dollars so by the jury assessed as aforesaid, together with the costs in this behalf expended, for which let execution issue.

Circuit Court United States, Northern Division, Northern District of Alabama.

20 THIRD NATIONAL BANK OF CHATTANOOGA, Pl'ff,
vs.
EUGENE C. GORDON, Def't.

Agreement of Counsel.

In the above-entitled cause it is agreed that the defendant shall have thirty days from this date in which to prepare & have signed by the presiding judge a bill of exceptions in said cause.

This done in open court this the 14 day of April, 1888.

WILLIAM RICHARDSON,
Att'y for Pl'ff.
YOUNG & HUMES & WALKER,
For Def't.

Endorsed: No. 1444. Third National Bank *vs.* E. C. Gordon. Agreement of counsel. Filed April 14th, 1888. A. W. McCullough, clerk.

Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the circuit court of the United States for the northern division of the northern district of Alabama, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, between the Third National Bank of Chatanooga, Tennessee, and Eugene C. Gordon, a manifest error hath happened to the great damage of the said E. C. Gordon, as by his complaint appears, we,

being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in
21 this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of next October, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Samuel F. Miller, senior associate justice, having precedence, the chief justiceship being vacant, of the said Supreme Court, this 14th day of April, in the year of our Lord one thousand eight hundred and eighty-eight.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—
HARRY T. TOULMIN,
Dis't Judge, Presiding in the Circuit Court.

Endorsed: Eugene C. Gordon, pl'ff in error, *vs.* Third National Bank of Chattanooga, Tenn., def't in error. Writ of error. Filed in clerk's office this 17th day of April, A. D. 1888. A. W. McCullough, clerk.

A copy of the within writ of error was lodged in my office
22 for said The Third National Bank, defendant in error, on the 23d day of April, 1888, and within sixty days, Sundays excluded, after the rendering of the judgment in said cause.

A. W. McCULLOUGH, *Clerk.*

Citation.

The United States of America to The Third National Bank of Chattanooga, Tennessee, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern division of the northern district of Alabama, wherein Eugene C. Gordon is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Harry T. Toulmin, judge of the circuit court of the United States for the northern division of the northern

district of Alabama, this 14th day of April, in the year of our Lord one thousand eight hundred and eighty-eight.

HARRY T. TOULMIN,
Dist. Judge, Presiding.

Endorsed: Eugene C. Gordon, pl'ff in error, *vs.* Third Nat.
23 Bank of Chattanooga, Tenn., def't in error. Original citation. Filed in clerk's office this 17th day of April, A. D. 1888.
A. W. McCULLOUGH, *Clerk.*

Executed by filing a copy on Judge Richardson, att'y for plaintiff, 3rd Nat. Bank of Chattanooga, in Huntsville, Ala., Ap'l 23d, 1888.

A. H. KELLER, *U. S. M.*,
P'r GEO. P. TURNER, *Dep'ty.*

Bond.

Know all men by these presents that we, Eugene C. Gordon and C. C. Harris and Milton Humes, are held and firmly bound unto The Third National Bank of Chattanooga, Tennessee, in the full and just sum of ten thousand & five hundred dollars, to be paid to the said Third National bank, its certain attorney, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 14th day of April, in the year of our Lord one thousand eight hundred and eighty-eight.

Whereas lately, at a regular term, in a suit depending in the circuit court of the United States for the northern division of the northern district of Alabama, between The Third National Bank of Chattanooga, Tennessee, and Eugence C. Gordon, judgment was rendered against the said Gordon; and the said Gordon having prosecuted a writ of error in the Supreme Court of the United States to reverse the judgment aforesaid and a citation having issued
24 directed to the said Third national bank citing and admonishing it to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next: Now, the condition of the above obligation is such that if the said Gordon shall prosecute his writ of error to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

E. C. GORDON. [SEAL.]
C. C. HARRIS. [SEAL.]
MILTON HUMES. [SEAL.]

Sealed and delivered in the presence of—
HARRY T. TOULMIN, *Dist. Judge.*

C. C. Harris and Milton Humes, being duly sworn, depose & say & each for himself saith that he is worth $10,500 over & above all just debts & liabilities & exemptions.

C. C. HARRIS.
MILTON HUMES.

Sworn to this 17 day of April, 1888, before me—

——— ———.

Approve the within bond & the sureties thereto.

HARRY T. TOULMIN,
Dist. Judge.

Endorsed: Eugence C. Gordon, pl'ff in error, *vs.* Third National Bank of Chattanooga, Tenn., def't in error. Bond. Filed in clerk's office this 17th day of April, A. D. 1888. A. W. McCullough, clerk.

25 *Bill of Exceptions.*

In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama, at Huntsville, April Term, 1888.

THE THIRD NATIONAL BANK OF CHATTANOOGA, TENNESSEE,
Plaintiff,
vs.
E. C. GORDON, Defendant.

Be it known that at the said term of said court, in the cause therein pending wherein The Third National Bank of Chattanooga, Tennessee, is plaintiff and E. C. Gordon defendant, the following proceedings were had:

Plaintiff offered in evidence an instrument in writing, in words and figures as follows:

"$2,500.00. CHATTANOOGA, TENN., *Febr'y 15th*, 1887.

Sixty days after date I promise to pay to the order of myself twenty-five hundred dollars at 3rd Nat'n'l Bank, Chattanooga, Tenn., value received.

E. C. GORDON."

Upon the back of said instrument were the following words.

"Demand, protest, and notice of protest waived and payment guaranteed within five days from date of maturity.

E. C. GORDON.
D. G. CRUDUP & CO."

The defendant objected to the introduction of this instrument in evidence because it does not appear therefrom that the defendant endorsed the note made by him so as to make the same legally

binding upon him and because his signature to said contract of waiver and guaranty is not an endorsement making the note
26 payable by him.

The court overruled this objection and the defendant duly excepted.

Plaintiff then offered in evidence an instrument in writing, in words and figures as follows:

"$2,500.00. CHATTANOOGA, TENN., *Febr'y 15th*, 1887.

Ninety days after date I promise to pay to the order of myself twenty-five hundred dollars at 3rd Nat'n'l Bank, Chattanooga, Tenn., value received.

E. C. GORDON."

Upon the back of said instrument was endorsed the names "E. C. Gordon" and "D. G. Crudup & Co.," and below the endorsement "E. C. Gordon" and above the endorsement "D. G. Crudup & Co." was stamped in printed letters the following words: "Demand, protest, and notice of protest waived, and payment guaranteed within five days from date of maturity."

The defendant objected to the introduction of said instrument in evidence because of the variance between it and the instrument set out in the complaint, in this, that the instrument upon which defendant is sued purports to contain said written waiver and guaranty in the contract signed by him, while in the instrument offered in evidence defendant's name is not signed to said written waiver and guaranty, and the same do not appear as part of the contract made by defendant. The court overruled this objected and defendant duly excepted.

JOHN A. HART was then examined as a witness for the plaintiff and testified as follows:

I am the president of the plaintiff bank, which does busi-
27 ness at Chattanooga, Tennessee. Plaintiff is the owner of the two notes offered in evidence; plaintiff received them two or three days after the dates thereof. Mr. Tabler, of the firm of Tabler, Crudup & Co., brought the notes to the bank. At that time there was nothing on the back of the notes but the signature of the defendant, E. C. Gordon. Several days after the notes were brought to the bank they were endorsed by D. G. Crudup & Co., and we then discounted them for D. G. Crudup & Co., and the amount for which they were discounted was placed to the credit of D. G. Crudup & Co. with the plaintiff. We discounted the notes in regular course of business, before the maturity of either of them. At the time the notes were discounted there was nothing on the back of either of them but the signatures of E. C. Gordon and D. G. Crudup & Co. The words on the back of the notes besides those signatures were stamped thereon, when the notes fell due, at the request of Crudup & Co. to save protest fees and costs. Crudup & Co. agreed to the waiver and guaranty expressed in the words on the backs of the notes. The defendant had nothing to do with the agreement stamped on

the back. He was not informed thereof. It was intended to stamp that agreement of waiver and guaranty over the name of D. G. Crudup & Co. alone, but in stamping one of the notes the words were put on upside down, as said note shows, and in restamping the words were put over the defendant's signature also. (The defendant moved to exclude said instrument first above offered in evi-
28 dence, because plaintiff in putting said words on the back over defendant's signature materially altered the contract signed by defendant, without his knowledge or consent, and because of the variance between the instrument described in the complaint and said instrument offered in evidence. The court overruled this motion, and the defendant duly excepted.) Witness stated that at the time the notes were discounted plaintiff had no notice that defendant signed the same for the accommodation of D. G. Crudup & Co., and did not know that such was the case until after the notes were due.

On cross-examination witness stated that plaintiff had no communication with defendant before the maturity of either one of the notes; defendant has not been a customer of the bank. After the notes were due we gave notice to the defendant, at Decatur, Alabama, where he was then residing, and demanded payment of him, which was refused. Plaintiff had no communication with defendant until after both notes matured. We then wrote him several letters demanding payment, about a month after maturity of notes, and in reply to one of these letters plaintiff received from defendant a letter in which he stated that he signed the notes for the accommodation of Crudup & Co. I don't know what became of this letter of defendant. My recollection is that in that letter Gordon requested us to indulge Crudup & Co.; don't think that that letter was preserved.

29 On examination in rebuttal witness stated that the letters written to defendant after the maturity of the notes were letters urging him to take care of his notes. The letter that Gordon wrote in reply stated that the notes were accom-odation paper. We discounted the notes in regular course of business before their maturity without any notice that they were accom-odation paper.

Here plaintiff closed.

Plaintiff having admitted before entering upon the trial that the testimony of C. D. Clark, an absent witness for defendant, would, if he were present, be as the same is set out in the following statement sworn to by defendant, and having waived all objections to the proof and certification of the following written instruments, subject only to objections to the competency of the contents thereof as evidence, the following statement and written instruments were offered and read in evidence by the defendant:

THE STATE OF ALA., }
Madison County. }

U. S. C't, April Term, 1888.

3D NAT. BANK, CHATTA., TENN., }
vs.
E. C. GORDON. }

Personally appeared before me, the undersigned clerk of said court, the said E. C. Gordon, who, after being duly sworn as the law directs, upon his oath states that he cannot safely go to trial in
30 the above-styled cause at the present term of this honorable court for the want of the testimony of C. D. Clark, by whom he expects — prove that he, the said Clark, is and has been for some years past a practicing att'y at the Chattanooga bar, in the State of Tennessee, and a member of the law firm of Richmond & Clark, composed of himself and *and* Theodore Richmond.

That as an attorney he, on the 2d day of September, 1887, at the instance and request of plaintiff, prepared the deed hereto appended from John Crudup to the said Theodore Richmond and simultaneously therewith a separate defeasance, a true copy of which is hereto appended as a part hereof, and that at the time the said instruments were so prepared and executed it was distinctly agreed and understood that the payment of the indebtedness sued on was thereby and in consideration thereof postponed for twelve months thereafter, and for the want of the certificate of the judge of the circuit court or the chancery court of the judicial district in which the city of Chattanooga and the county of Hamilton, in said State of Tennessee, is situated to the official character of the register of deeds in said county and State who made and certified the instruments or deeds hereto appended as a part hereof, as required by the act of Congress in such cases.

And for the want of the original instrument executed as
31 a separate defeasance by the said Theodore Richmond at the time of the execution to him of the said deed by the said John Crudup, which is in the possession of D. G. Crudup and would have been present but for the fact that the same was locked up in the safe of the said D. G. Crudup, in the said city of Chattanooga, and his clerk, who had the key to his said safe, was out of the office when he called to get the same just before the last train left said city of Chattanooga for the city of Huntsville, on which he could reach the latter place so as to be present at the call of said cause for trial, and that he, the said Crudup, who is here present, did not have time to procure said instruments and take said train.

That the said circuit judge of said district was away from the city of Chattanooga holding his court in some other county of his district when the copies of said deeds, hereto appended, were made by the keeper of the records containing the same, who made them so that he could not get his, the said judge's, said certificate.

And that the chancellor of said district is sick, and, as he is informed and believes, was and is absent from his home in the said city of Chattanooga on account of sickness and in attendance at some springs somewhere at a distance, the place not known to affiant, so that he could not be reached in time to get his said certificate in time for the call of said cause.

32 That affiant had been informed that the said cause would not nor indeed the civil docket of this court be taken up before the 3rd Monday of the term, as the criminal business of the court would occupy the first two weeks of the term; that plaintiff's att'y informed his att'y, T. D. Young, that such was the practice of the court.

And affiant further makes oath that the absence of said evidence & proof, all of which he expects to make and believes to be true, was not and is not occasioned by his procurement or consent, and that if said cause is continued until the next term of this court he will have the same present, and that this continuance is not ask- for delay, but that justice may be done.

E. C. GORDON.

Sworn to and subscribed before me April 13, 1888.
A. W. McCULLOUGH, *Clerk.*

Copy.

Whereas, on the 2d day of September, 1887, John Crudup conveyed to me lots 13, 14, & 15, in Bluff View addition to the city of Chattanooga, Tennessee, being same conveyed to him by Samuel Read, trustee: Now, this is to show that, in fact, said property was conveyed to me in trust for the uses following—1st, to secure & pay an indebtedness to the Third National Bank of Chattanooga, Tennessee, of about $11,600 & interest, due from Tabler, Crudup & Co. & D. G. Crudup & Co., and after said bank is paid and

33 reasonable compensation for any trouble & expense I may be at in the matter, balance, if any, to be held for the use & benefit of D. G. Crudup. It is agreed that I shall hold said real estate for 12 months unless sooner sold by direction of D. G. Crudup, & if said bank debt is not then paid the lots to be sold in such manner as may be agreed on by said bank & D. G. Crudup. I do agree at any time to make deed to carry out any sale of said land agreed on by said bank & Crudup, but without covenants of warranty.

(Signed) T. RICHMOND.

Att.: C. D. CLARK.
D. G. CRUDUP.

Whereas D. G. Crudup & Co. and Tabler, Crudup & Co., two firms (both composed of D. G. Crudup and J. H. Tabler), and the Tabler-Crudup Coal and Coke Company, a corporation, some time since made an assignment for the benefit of the creditors of both of said firms

and of said corporation to T. H. Ewing and W. E. Baskette, reference being here had to said assignment, neither of the assignees have taken charge of the property assigned to them nor assumed to execute the trusts, and it is the intention of Tabler and Crudup to arrange with their creditors to save expense and avoid the execution of said assignment: Now we, J. H. Tabler and D. G. Crudup,
34 do hereby sell, transfer, and convey unto Rob't P. Woodard, trustee, the following property in Hamilton county, Tennessee, to wit:

1. One undivided half interest in lots numbers 171, 172, 173, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 201, 202, 203, 204, 205, 206, 207, 211, 217, 218, 219, 220, and 221 in Montague's subdivision in Park Place, Chattanooga, Tenn.

2. An undivided one-third interest in and to *in and to* the north half (N. ½) of the southeast quarter (S. E. ¼) of the southwest quarter (S. W. ¼) of section ten (10) of the third fractional township, range 4 west of the basis line of the Ocoee district, being the Curtis stone *the Curtis stone* quarry twenty-acre tract, about two miles south of Chattanooga, Tenn.

3. One-fourth undivided interest in the north half (N. ½) of the southwest quarter of section ten, township 3, range 4 west of the basis line in the Ocoee district, being shares Nos. (4) four, ten (10), and one-half of shares Nos. (5) and twelve (12), in all three shares in the James syndicate purchase made by Walter Allin of E. A. James, said Walter Allin being trustee of the 80 acres.

4. Three and one-half (3½) shares, being share No. seven (7), three-fourths of share No. twelve (12), share No. thirteen (13), one-half of share No. ten (10), and one-fourth of share No. seventeen (17), in the Burris nineteen (19) acre tract in Chattanooga, Tenn., as shown by contract with P. R. Albert, trustee, for purchase of same,
35 dated Oct. 13, 1884, and registered in Book Q, vol. 2, pages 620 to 625, register's office of Hamilton county, Tenn., these 3½ shares representing 3½ 19ths of said 19-acre tract of land.

We covenant that we are lawfully seized of the above-described property, have a good right to convey it; that the same is unincumbered and we will warrant the title thereto against all lawful claims, and we disannul and annul said assignment before mentioned so far as this trust deed is concerned.

To have and to hold said property to said Rob't P. Woodard, trustee, his successors and assigns forever.

But this deed is made in trust for the following purposes and none other, to wit: We, said J. H. Tabler and D. G. Crudup, are indebted to various creditors, as set out in Exhibit "A" attached hereto and made a part of this deed, by separate notes, each due at six months, bearing interest, amounting in all to something over $3,000.00, which notes are given by us for money advanced by said creditors to pay off prior liens on said before-described property; and said D. G. Crudup & Co., Tabler, Crudup & Co., and said Tabler-Crudup Coal and Coke Company, one or two or all of them, are indebted to various creditors, as set out in Exhibit "B" attached hereto and made a

part of this deed. The amounts of these debts may not in
36 each instance be exactly as stated in said exhibit, but they
are very nearly accurate, and said J. H. Tabler and D. B. Crudup have assumed and agreed to pay said debts named in Exhibit "B," and, by the acceptance of this trust deed, said creditors are to release the Tabler-Crudup Coal and Coke Company from said debts in Exhibit "B" and to grant an extension or time to said Tabler & Crudup in which for them to pay said debts, as shown in this deed. Said Tabler & Crudup agree to pay $6,000.00 of the debts named in Exhibit "A" and "B" aforesaid, with interest within six months from this date, and to pay one-half of the balance of said debts and interest within twelve months, and the remainder within eighteen months, with interest. The first money paid by them within six months shall go to pay in full the debts and interest named in said Exhibit "A," and the other money, as fast as paid, shall be paid by them *pro rata* to the creditors named in said Exhibit "B:" Now, if said Tabler and Crudup shall pay $6,000.00 and interest on said debts within six months; one-half of the balance within twelve months, and the other half of the balance within 18 months from this date, all with interest, as hereinbefore provided, then the above trust deed to become null and void; but in the event they fail to pay said debts or any part thereof within the
37 times and in the amounts above agreed upon, then said trustee
or his successor is authorized and empowered, after advertising once a week for four successive weeks in some newspaper published in Chattanooga, Tenn., stating the times, terms, and place of sale, to sell said property, all or any of it, at public outcry to the highest bidder, for cash, at the court-house door in Chattanooga, in bar of the equity of redemption and all right of homestead, which are hereby waived in favor of this trust deed. The proceeds of sale will be applied, first, to the payment of the expenses of this trust; second, to payment of the debts and interest named in Exhibit "A" in full; then to the debts named in Exhibit "B," in full, if sufficient, and, if not, *pro rata*, and the balance, if any, will be applied as provided in our agreement with D. G. Curtis and others in the case of D. G. Curtis *et al. vs.* Tabler, Crudup *et al.*, in chancery, at Chattanooga.

Bond and oath required by law of the trustee are waived.

It is further understood and agreed that Tabler & Crudup may sell the properties above named at a minimum of $24,000.00 with the consent of compl'ts in said chancery suit of Curtis *et al. vs.* Tabler, Crudup *et al.* as to the price each lot or tract shall be sold for,
but the proceeds of these sales, if any such are made, shall be
38 first applied to the debts above secured and the balance paid
into said court in said cause.

Mary T. Table-, wife of said J. H. Tabler, and Novella Crudup, wife of D. G. Crudup, hereby join in the above deed and convey and relinquish all right of dower, homestead, or other interest they may have in any of the before-described property in favor of this trust deed and waive all rights thereto. It is further understood that, if

any of the lands above mentioned are partitioned or divided among the owners thereof during the running of this trust deed, this deed shall operate only upon the parts which may fall to Tabler & Crudup or either of them.

Dated as of October 1st, 1887.

J. H. TABLER.
D. G. CRUDUP.
MRS. NOVELLA CRUDUP.
MRS. M. T. TABLER.

STATE OF TENNESSEE, }
County of Hamilton. }

Before me, N. I. Mayes, a notary public, duly appointed, commissioned, and qualified, in and for the county and State aforesaid, personally appeared J. H. Tabler and wife, M. T. Tabler, also D. G. Crudup & wife, Novella Crudup, the within-named bargainers, with whom I am personally acquainted, and who acknowledge that they executed the within instrument for the purpose therein contained; and, M. T. Tabler and Novella Crudup, wives of the said J. H.
39 Tabler and D. G. Crudup, both having appeared before me privately and apart from their husbands, the said M. T. Tabler and Novella Crudup acknowledged the execution of the said deed to have been done by them freely, voluntarily, and understandingly without compulsion or restraint from their said husbands and for the purposes herein expressed.

In testimony whereof I have hereunto set my hand and notarial seal, at office, in the city of Chattanooga, Tennessee, on this the 22d day of Oct'r, 1887.

[Seal N. I. Mayes, Notary Public, Hamilton County, Tennessee.]

N. I. MAYES,
Notary Public.

EXHIBIT "A" TO DEED OF TRUST OF TABLER & CRUDUP TO ROB'T P. WOODARD, TRUSTEE.

List of Creditors and Amounts Due Them.

J. H. Warner & Co.	371 66
Oehmig, Johnson & Co.	113 01
G. W. Wheland	138 86
Simpson Bros.	20 85
I. B. Merriam & Co.	111 82
Mitchell & Co.	36 15
M. O. Peeples & Bros.	79 68
F. J. Waddel (agent Hazard Powder Co.)	94 40
Gottschalk & Co.	14 13
P. Fleming	60 11
C. C. Shelton	295 11
Mixon & Wester	63 15
T. H. Payne & Co.	9 65
M. Deitzen & Bro.	45 37

	Union Iron Works Co.	38 61
	M. Block & Co.	22 95
40	Jackson, Trigg & Co.	203 62
	Sundquist M'f'g Co.	7 47
	Roseneau, Crutchfield & Co.	43 19
	Smartt Bros. & Co.	27 97
	Carter, Magill & Ewing	33 96
	Guismar Bros. & Bissinger	11 53
	J. M. Stone & Co.	11 86
	Pickens & Thayer	29 23
	N. C. Ford & Co.	10 67
	Elder & White	42 67
	T. A. Snow	7 47
	C. E. James & Co.	50 21
	Handley, Reeves & Co.	438 53
	J. S. Reeves & Co.	42 56
	Holling, Sons & Co.	64 16
	Handley, Farquharson & Hill	14 92
	B. H. Cooke & Co.	54 18
	Cowan & Co.	27 48
	Rob't P. Woodard	75 00
	Walter Allin	300 00
		$3,004 19

EXHIBIT "B" TO DEED OF TRUST OF TABLER & CRUDUP TO ROB'T P. WOODARD, TRUSTEE.

List of Creditors and Amounts Due Them.

	Dixie Powder Co.	819 28
	L. H. Wilson	1 85
	Howard, Ewing & Craigmiles	433 28
	J. H. Warner & Co.	1,742 16
	H. G. Young	4 00
	Oehmig, Johnson & Co.	529 74
	Lowry, Johns & Co.	160 53
	G. W. Wheland	650 90
41	McCorkle & Ward	209 90
	G. G. Lilly	500 00
	Simpson Bros.	97 75
	I. B. Merriam & Co.	524 17
	Mitchell & Co.	169 46
	W. O. Peeples & Bros., $232.13, and W. O. Peeples, $103.88	336 01
	F. J. Waddell, agent	442 50
	Gottschalk & Co.	66 25
	P. Fleming	281 78
	C. C. Shelton	1,383 84
	Nixon & Wester	296 02
	T. H. Payne & Co.	45 23

N. Deitzen & Bro.			212 67
Union Iron Works Co.			181 00
M. Block & Co.			107 56
Standard Oil Co.			97 37
Jackson & Trigg			954 47
Sundquist M'f'g Co.			35 00
Roseneau, Crutchfield & Co.			202 43
Smartt Bros. & Co.			131 10
Gibson & Lee M'f'g Co.			4 10
Crandall & Morrison			3 75
Lookout Broom Co.			13 00
J. W. Derdorf & Co.			25
Wason Car & Foundry Co.			7 42
Truxall & Dunmeyer			11 00
Carter, Magill & Ewing			159 19
Geismar Bros. & Bissinger			54 07
Loomis, Hart & Co.			1 50
E. H. Troxall			77 77
J. M. Stone & Co.			55 61
	Pickens & Thayer	29 25	
42	Pickens, Smith & Thayer	107 75	
			137 00
	N. C. Ford & Co.		50 00
Chattanooga Commercial			4 00
Elder & White			200 00
T. A. Snow			35 00
Lilly & Butler			38 10
Fritz & Wiehl			4 60
Ford, Eaton & Co., Cincinnati			61 15
T. J. Lloyd, Daisy			24 00
Cin., N. O. & T. P. R'y, Cincinnati			275 48
Hardy & Miller, Meridian			45 00
R. C. Brickell, Huntsville, Ala.			500 00
R. A. Tredwell, Nashville			560 00
J. C. Hodge			376 67
Handly, Reeves & Co.			2,055 63
J. S. Reeves & Co.			199 48
Hollins, Sons & Co.			300 75
Handly, Farquharson & Hill			69 93
R. H. Cooke & Co.			253 96
Cassity Oil Co.			19 50
Buford Bros. & Justi			26 78
Hall, Ordway & Co.			106 90
Pendleton Drug Co.			6 92
Cowan & Co.			128 82
Phillips, Bailey & Co.			18 90
McComb, Hawk & Hogg			73 05
			$16,575 03

STATE OF TENNESSEE, }
Hamilton County. }

The above deed and certificate were filed for record 22d Oct., 1887, at 4.45 p. m.; entered in Note Book No. 5, page 72; recorded in H, vol. 3, page 235.

43 Witness my hand, at office, in Chattanooga.

H. C. BECK, *Register*,
Per J. K. HODGES,
Dep. Register.

STATE OF TENNESSEE, }
Hamilton County. }

I, J. K. Hodges, deputy register for H. C. Beck, register, do hereby certify that the foregoing thirteen pages and eight lines *is* a full, true, perfect, and correct copy of the deed of trust from J. H. Tabler *et al.* to Rob't P. Woodard, together with certificate of probate and registration, as the same remains of record in my office in Book H, vol. 3, page 235.

Witness my hand, at office, in Chattanooga, 4 Ap'l, 1888.

H. C. BECK, *Register*,
Per J. K. HODGES,
Dep. Register.

We, D. G. Crudup & Co., a firm composed of D. G. Crudup & J. H. Tabler; Tabler, Crudup & Company, a firm composed of D. G. Crudup & J. H. Tabler, & the Tabler-Crudup Coal & Coke Company, a body corporate & chartered under the laws of Tennessee, have this day bargained, sold, transferred, & conveyed, & by these presents do bargain, sell, transfer, & convey, to W. E. Baskett & T. H. Ewing, trustees, the following-described property, to wit: We, the said D. G. Crudup & Company & Tabler, Crudup & Company, convey to said trustees all the property we have and own of every kind, character, & description, both firm & individual property, except that exempt from execution under the homestead &

44 exemption laws of Tennessee, including all our personalty, stocks, bonds, choses in action, & realty & interest in realty, or other property, of which the following is the best list we can now give, viz.: A one-half, ½, undivided interest in lots 171, 172, 173, 181 to 190, inclusive; lots 211, 217, 218, 219, 221, & 201 to 207, inclusive, & one additional lot, number not now remembered, in all 26 lots, in Montague's subdivision of Park place, in Chattanooga, Tennessee, & any other lands or interest we may own in said Park place; also an undivided ⅓ interest in the north half of the southeast ¼ of the southwest ¼ of section ten, 3rd fractional township, 4th range west of the basis line, known as the "Curtis stone quarry tract," lying about two miles south of Chattanooga, Tennessee; also three and one-half (3½) shares in what is known as the Woodworth & Adams 19 acres; also one-fourth (¼) of what is known as the James 80 acres, near the city of Chattanooga; also one-half (½) interest in one hundred & fifty (150) lots at Boyce station, near Chattanooga, Tennessee;

also one-third (⅓) interest in what is known as the stone quarry property, near Park station, on the belt railroad around Chattanooga, Tennessee, all of said real estate being in Hamilton county, Tennessee.

Also about 70 acres of land in Wilson county, Tennessee, near the Smith county line; also about (300) three hundred acres of land in Colbert county, Alabama; also all our stock & interest in
45 the Chattanooga Land, Coal, Iron & Railway Company of Chattanooga, Tennessee, which cost us $18,200.00; all our interest & stock in the Chattanooga Land Company, worth $3,500; also all our stock & interest in what is known as the Read & James syndicate; also all our stock & interest in the Refugio Gold & Silver Mining Company, worth about $11,000; also all our stock in the Tabler-Crudup Coal & Coke Company, amounting to (330) three hundred & thirty shares; also all our account & claim against the Tabler-Crudup Coal & Coke Company for money advanced said corporation & paid out on its account, amounting to about thirty-five thousand dollars; also all our office furniture in our office, in the north end of the Peebles block, known as the Palace hotel building, in Chattanooga, Tennessee, consisting — desks, tables, chairs, railing, clocks, books, stationery, &c., &., and also one iron safe in our said office, and all other property we have or own, whether mentioned hereinbefore or not or whether mentioned in the sworn schedule of property of D. G. Crudup & Co. & Tabler, Crudup & Co., heretofore attached & here referred to for additional description & for that purpose made a part of this deed of trust, & to identify it the same is marked Exhibit "A."

The said Tabler-Crudup Coal & Coke Company convey to said trustees, Baskett & Ewing, the following-described property, all situated, lying, & being in Hamilton county, Tennessee: About
46 seven thousand (7,000) acres of coal & mineral lands & the mineral in about two thousand additional acres near Daisy, Tennessee, & in the first & eight-(8) civil districts of Hamilton county, Tennessee, formerly known as the "Daisy Coal Mining Compan*ie*'s property" & fully described in a deed of trust given by the Tabler-Crudup Coal & Coke Company to the Safe Deposit, Trust & Banking Company to secure certain bonds not yet due, registered in the register's office of Hamilton county, Tennessee, in Book S, vol. (2) two, page 519 to page 523, to which reference is here made for better description, & dated June 8th, 1885, & also described in a deed from James A. Parks to the Daisy Coal Mining Company, Book S, vol. 2, pages 523 & 524, register's office of Hamilton county, Tennessee, dated Feb'y 7th, 1883; also a tract of land fronting on the C. S. R. R., in the first district of Hamilton county, Tennessee, bounded on the west by Mrs. Annie Jones & R. P. Hall on south, by C. S. R. R. on the east & the Ogoes Ferry road on the north, containing about three acres, & also a tract of about 60 acres of land conveyed — Daisy Coal Mining Company June 17th, 1885, by W. H. Bean & wife & Jno. Mulligan, & registered in Book S, vol. two, pp. 525 & 526, to which reference is here made for description, on which said land is located the *the* Tabler-Crudup Coal &

Coke Companie's coal mines & coking ovens; also *also* the Co.'s mules, machinery, appliances, side tracks, railroads, tools, wagons, coke ovens, locomotives, engines, boilers, wire ropes, blacksmith
47 shop & tools, houses, stables, one kiln of brick, & all the appliances for making brick; also our stock of goods, consisting of groceries, dry goods, clothing, hats, caps, shoes, drugs, tinware, queensware, hardware, &c., &c., & store fixtures in the store, all of said personal property being at or near Daisy, Tennessee, on the property of the Tabler-Crudup Coal & Coke Company, & being used in operating said mines; all of which property is more fully set forth & described in a sworn schedule or list of assets or property of the said Tabler-Crudup Coal & Coke Co., hereto attached, marked Exhibit "B," & here referred to & made a part of this trust deed; and if any property of the said Tabler-Crudup Coal & Coke Co. is omitted from said list the same is omitted by oversight & is intended to be included. The said Tabler-Crudup Coal & Coke Company hereby conveys to the said trustees, Baskett & Ewing, all the property, real & personal, which it owns or has interest for the uses & trusts hereinafter mentioned. A better description of the land owned by said Tabler-Crudup & Co., hereinbefore described as being in Colbert county, Ala., is as follows, all lying in Colbert county, Ala., & the lands sold by Rob't B. Lindsey, administrator of the estate of F. C. Vinson, March 17, 1884, & being an interest in the west ½ of the S. E. ¼ of sec. 11, the N. W. ¼ of sec. 23, the west ½ of the N. E. ¼ of sec. 14, the east ½ of S. W. ¼ of sec. 23, the west ½ of S. E. ¼ of sec. 23, all in township 5 & range 11, in
48 said county. The land hereinbefore mentioned as being in Wilson county, Tennessee, & belonging to D. G. Crudup & Co., is the same land conveyed to D. G. Crudup by R. J. Turner & wife by deed dated Dec. 19, 1885, not yet registered, & being in the 12 civil district of said Wilson county, Tennessee, lying on Dry fork or Center creek, & the same land sold R. J. Turner by G. T. Macon & wife & containing by estimation 85 acres; to have & to hold unto the said T. H. Ewing & W. E. Basket, or the survivor, or one qualifying & accepting this trust, should one decline to act, his heirs & representatives & successors forever.

The seven thousand acres of land belonging to the Tabler-Crudup Coal & Coke Company is encumbered with a deed of trust to secure bonds, amounting to fifty thousand dollars, that will not come due for years yet, & there may be a small balance of purchase-money in some instances owing on some of the other property; with this exception, the bargainers are well seized of the respective lands & properties hereinbefore respectively conveyed, have good right to convey the same, & will forever warrant & defend the title to the same against the lawful claims of all persons whomsoever. This conveyance is made to W. E. Baskett & T. H. Ewing; but in the event of the death of either of these gentlemen or the refusal of one of them to serve, then the other or survivor is hereby fully authorized & empowered to execute & carry out the trusts herein-
49 after created in the same manner in which they both could execute the trust should they both survive & qualify.

The foregoing conveyance is made for the following uses & trusts & none other—that is to say, the said bargainers, D. G. Crudup & Co., Tabler, Crudup & Co., & the Tabler-Crudup Coal & Coke Company, are largely indebted to a number of creditors, some of whose debts are due & some not due. A list of the creditors of D. G. Crudup & Co. & Tabler, Crudup & Co. is hereto attached, marked Exhibit "C," referred to & made a part of this trust deed. There may be other small creditors whose names do not appear in said list. A list & schedule of the creditors & liabilities of the Tabler-Crudup Coal & Coke Company is also hereto attached, marked Exhibit "D," referred to & made a part of this trust deed. These schedules show as far as recollected the liabilities of the bargainers, to whom liable, the amount, & when due. The stock of the Tabler-Crudup Coal & Coke Company is practically all owned by D. G. Crudup & J. H. Tabler, & in many instances they are endorsers for the Tabler-Crudup coal & coke Co. & in other instances credit has been extended the coal & coke Co. upon their agreement to personally assume the payment. While the bargainers are largely indebted, their assets, if judiciously managed, can be made to pay & overpay all their liabilities. Therefore, to secure to their creditors an
50 equal distribution of *of* their assets, to enable all creditors to be paid the full amount of their debts, they, the said bargainers, desire to make & do hereby make to said trustees or the survivor or one qualifying as such a general assignment of all their property for the benefit of their creditors, to be equally shared between them in proportion to the amounts of their respective debts. The said trustees or trustee surviving or qualifying is hereby directed to take charge of all of said property & use & dispose of it to the best advantage for the creditors. The coal & coke company property is being used & operated as a coal mine, & coal is being mined & burned into coke; said company is now in full operation with contracts & obligations to fill. The trustees or trustee acting is hereby authorized to assume control of these works & operate them for the best interest of the creditors pending a sale & conversion of said property into money for the use of creditors, but in no event will he operate said mines longer than six months from the date hereof, unless it is by consent of a majority in value of the creditors. The said trustees or trustee acting will take charge of all property of the bargainers, &, as fast as may be, convert it into money & pay off said indebtedness as it matures. The property belonging to the Tabler-Crudup Coal & Coke Company will be applied to the payment
51 of the debts of said company, & the assets & property of said D. G. Crudup & Co. & Tabler, Crudup & Co. will first be applied to the payment of the creditors of these two firms & the individual indebtedness of J. H. Tabler & D. G. Crudup & where they are endorsers for the Tabler-Crudup Coal & Coke Co.; & if the property of the said coal & coke company fails to pay & satisfy the creditors of said coal & coke Co., then the property of said Crudup & Co. & Tabler, Crudup & Co. shall be sold to satisfy the creditors of the said coal & coke Co. The trustee or trustees are directed to dispose of said property as fast as they can, having a due regard for the best

interest of the creditors; & as fast as said property is disposed of & funds realized they shall be paid out to creditors as the law directs. Full power & authority is given said trustees or acting trustee to sell at public or private sale & to sell upon such terms as he thinks for the best interest of the creditors. He is hereby duly authorized to sell for cash or on time in bar of the equity & right of redemption, & make to the purchaser or purchasers titles; to collect in all debts due any of the bargainers & hold the same as assets for distribution among all the creditors. The whole of said trust shall be wound up & settled, if possible, within twelve (12) months from this date.

After the creditors are paid & the costs of this trust are
52 satisfied the balance of said property, if any, or its proceeds, if converted, shall be returned to said bargainers. The trustees or acting trustee is hereby authorized to employ such help as may be necessary to carry out the trusts herein created, to collect and pay over to the creditors all rents & profits arising from said property, & do everything necessary to faithfully carry out & execute the object & purposes of the trusts herein created, it being the intention of the bargainers & makers of this deed of trust to make a general assignment of all their property of every character, kind, & description for the use & benefit of their creditors, it being believe- that by this means all creditors will be fully paid & the bargainers be left considerable property after all their debts are paid. The trustees or acting trustee is hereby authorized to sell the respective bargainers' property as a whole or in parcels, so as to realize the most money possible for the creditors.

In testimony whereof witness the signatures of the said bargainers, D. G. Crudup & Co., Tabler, Crudup & Co., & the Tabler-Crudup Coal & Coke Company, by its treasurer, D. G. Crudup, & its corporation seal hereto attached this July 30, 1887.

D. G. CRUDUP.
D. G. CRUDUP & CO.
TABLER, CRUDUP & CO.
J. H. TABLER,
By D. G. CRUDUP, *Att'y-in-Fact.*
53 CRUDUP COAL & COKE CO.,
By D. G. CRUDUP, *Treasurer.*

I, T. H. Ewing, one of the trustees mentioned in the foregoing trust deed, hereby agree to accept the trust created, & will execute a trustee's bond & take the oath prescribed by law as soon as the same can be arranged.

July 30, 1887.

T. H. EWING.

STATE OF TENNESSEE, }
Hamilton County. }

Personally appeared before me, S. P. Stover, a notary public in and for said county, duly commissioned & qualified, D. G. Crudup, treasurer of the Tabler-Crudup Coal & Coke Company; also one of the firm of D. G. Crudup & Co. & Tabler, Crudup & Co. and agent

and att'y-in-fact for J. H. Tabler, the within and aforementioned bargainors, with whom I am personally acquainted, & who, for himself & D. G. Crudup & Co.; Tabler, Crudup & Co., & the Tabler-Crudup Coal & Coke Company, & J. H. Tabler, acknowledged that he executed the within instrument & deed of trust for the purposes, uses, and trusts therein contained & expressed.

In testimony whereof I have hereto set my hand and affixed my notarial seal, at office in Chattanooga, Tennessee, on this July 30, 1889.

[Seal S. P. Stover, Notary Public for Hamilton Co., Chattanooga, Tenn.]

S. P. STOVER,
Notary Public for Hamilton County, Tennessee.

54 EXHIBIT "A."

List of Property of D. G. Crudup & Co. and Tabler, Crudup & Co.

About three hundred (300) acres of land in Colbert county, Alabama, worth, say, $5.00 per acre	$1,500 00
About (70) seventy acres — land in Wilson county, Tennessee, near the Smith county line, cost	1,000 00
One-half of one hundred and fifty lots at Boyce station, worth, say	20,000 00
One-third of twenty acres of stone-quarry property near Park station	3,000 00
One-half of twenty-six lots in Park place, value	15,000 00
3½ shares in Woodworth & Adams 19 acres, value	10,500 00
One-fourth of the James 80 acres, value	5,000 00
Interest in Chatta. Land, Coal, Iron & Railway Company, cost	18,200 00
Interest in Read & James Land Syndicate	2,300 00
Interest in the Chattanooga Land Co.	3,500 00
Stock in the Refugio Gold & Silver Mining Company, say $33,000, worth about	11,000 00
Amount advanced (loaned) to the Tabler-Crudup Coal & Coke Co., about	35,000 00
Amount forward	$126,000 00

55 Amount brought forward $126,000 00

Office fixtures & furniture in North End People's block in Chattanooga, Tennessee, as follows:

4 desks, worth about	$60 00
2 tables, worth about	10 00
1 iron safe, worth about	90 00
Wire railing, worth about	50 00
1 partition & eight curtains	50 00
Eight chairs & one stool	5 00
Two clocks, books & stationery	10 00

One lot wooden railing	$30 00	
One partition curtain	10 00	
One lot old irons in basement	35 00	
		350 00
		$126,350 00

STATE OF TENNESSEE, }
Hamilton County. }

D. G. Crudup, being sworn, says that he is one of the firm of D. G. Cudrup & Co. & Tabler, Crudup & Co., both of which firms are composed of D. G. Crudup & J. H. Tabler, & that the foregoing schedule & list of property contains a complete schedule & list of all the property owned by said two firms & the individual members thereof to the best of his information, knowledge, & belief.

D. G. CRUDUP.

Sworn to & subscribed to before me this July 30, 1887.

[Seal S. P. Stover, Notary Public for Hamilton Co., Chattanooga, Tenn.]

S. P. STOVER,
Notary Public.

EXHIBIT "B."

56 *List of Property of Tabler-Crudup Coal & Coke Co.*

7,000 (seven thousand) acres coal & mineral lands and 2,000 (two thousand) acres mineral rights near Daisy, Hamilton Co., Tenn.

13 (thirteen) mules, 3 (three) wagons, 2 (two) pumps, 1 (one) locomotive, 50 (fifty) mine cars, 40 (forty) incline cars, 50 (fifty) coke ovens, incline road & tracks from mines to coke ovens, side track from railroad, road & track on coke ovens, 1 (one) charging car, 1 syphon apparatus, pipes, &c., 2 (two) engines & boilers, 2 (two) drums, 3 (three) large gro-ve pulleys, 3 (three) incline wire ropes (in use), 150 (one hundred & fifty) smaller pulleys, (3) three incline wire ropes (not in use), 10 (ten) iron coke barrows, 36 (thirty-six) other barrows, 18 (eighteen) sledges & stone hammers, 12 (twelve) coke shovels, 39 (thirty-nine) R. R. shovels, 24 (twenty-four) mattocks, 36 (thirty-six) R. R. picks, 12 (twelve) coke forks, 2 (two) sets blacksmith's tools, 1 (one) set carpenter's tools, 1 (one) bank scale, 1 (one) railroad track scale;

List of property—continued.

50 (fifty) miners' houses, 1 (one) superintendent's house, 2 (two) stables, with feed-rooms, 1 (one) kiln of bricks (large), 1 (one) blacksmith shop;

1 (one) mud wheel & other implements used for making bricks, of the value of	$200,000 00
1 (one) stock of goods, consisting of groceries, dry goods, clothing, boots, shoes, hats, caps, drugs, notions, tinware, queensware, &c.	4,000 00

Store fixtures, consisting of show-cases, safe, desks, tables, chairs, lamps, &c.	$1,000 00
50 acres valley land connecting the Daisy coal property with the C. S. railroad	3,000 00
	$208,000 00

57 All the items of personal property above set forth are appurtenances of the mineral property, mines, & ovens of the Tabler-Crudup Coal & Coke Co., and they are all at or near the said mines & ovens at Daisy, Hamilton county, Tennessee.

STATE OF TENNESSEE, }
Hamilton County. }

D. G. Crudup, treasurer of the Tabler-Crudup Coal & Coke Company, being sworn, says that the above & foregoing schedule & list of property contains a correct list & schedule of all the assets & property of the Tabler-Crudup Coal & Coke Company, to the best of his information, knowledge, & belief.

D. G. CRUDUP.

Sworn to, subscribed to before me this 30 day of July, 1889.

[S. P. Stover, Notary Public for Hamilton County, Chattanooga, Tenn.]

S. P. STOVER,
Notary Public.

EXHIBIT "C."

Liabilities of D. G. Crudup & Co. and Tabler, Crudup & Co.

A. W. Ligon, ac.			2,000 00
Dixie Powder Co., note July 8–11, '87		399 28	
" Aug. 14–17, '87		420 00	
			819 28
J. H. Warner & Co., " July 16–19, '87		300 00	
" 18–21, '87		400 00	
			700 00
Miscellaneous parties, about			750 00
R. C. Brickell, claims			1,000 00
Ro. A. Treadwell, about			560 00
J. C. Hodge, about			400 00
Harvey & Miller, about			45 00
			$6,274 28
D. L. Duncan			
Elder & White			200 00

58 EXHIBIT "D."

Liabilities of Tabler-Crudup Coal & Coke Co.

W. H. Bean, note due Nov. 3, '85		1,000 00
3 Nat. bank, including Gordon notes		11,600 00
Handly, Farquaharson & Hill, note due July 6–9, '87		69 93
Howard, Ewing & Craigmiles, note due July 11–14, '87		393 93
" " Aug. 0–1, '87		39 35
Handly, Reeves & Co., note due Aug. 7–10, '87	$587 00	
" " " 10–13, '87	866 04	
" " " 19–22, '87	587 00	
Interest	9 31	
		2,049 35
J. H. Warner & Co., due July 16–19, '87	200 00	
" " 18–21, '87	500 00	
" Aug. 22–25, '87	154 98	
" July 24–27, '87	187 18	
		1,042 16
Oehmig, Johnson & Co., July 18–21, '87	200 39	
Open ac	329 35	
		529 74
B. H. Cook & Co., July 27–30, '87		253 96
Lowry, Johns & Co., Aug. 0–3, '87	160 53	
" small open ac., say	30 00	
		190 53
G. W. Whitland, July 8–11, '87	155 67	
" 10–13, '87	262 93	
Aug. 7–10, '87	232 30	
		650 90
McCarkle & Ward, Aug. 8–11, '87	140 10	
" Sept. 10–13, '87	44 80	
" open ac., say	25 00	
		209 90
Theo. Richmond, Sept. 9–12, '87		756 00
G. G. Lilly, July 14–17, '87		500 00
C. E. James & Co., July 28–31, '87	255 20	
Open ac., about	200 00	
		455 20
J. H. Parker, cash'r, Sept. 22–25, '87		300 00
Walter Allin, Sept. 10–13, '87	60 95	
Aug. 10–13, '87	46 90	
Sept. 4–7, '87	71 50	
59 Oct. 5–8, '87	73 00	
		252 35
Simpson Bros., Sept. 0–2, '87		66 92
I. B. Merriam & Co., Aug. 4–7, '87	299 39	299 39
" Open ac. not known.		
Mitchell & Co., Aug. 4–7, '87	122 26	
" 28–31, '87	47 20	
		169 46

W. O. Peeples & Bros., Aug. 5–8, '87	232 13		232 13
Open ac. not known.			
F. J. Waddell, agent, Aug. 5–8, '87	180 00		
Sept. 4–7, '87	155 00		
Open ac.	107 50		
			442 50
T. G. Montague, Oct. 3–6, '87			94 00
Gottschalk & Co., Aug. 7–10, '87	38 50		38 50
Small open ac.			
P. Fleming, Sept. 9–12, '87	209 17		
Aug. 22–25, '87	72 61		
			281 78
C. C. Shelton, Aug. 11–14, '87	497 80		
Aug. 5–8, '87	315 85		
			813 65
Open ac. not stated.			
Nixon & Wester, Aug. 12–15, '87	105 74		
" 18–21, '87	95 89		
			201 63
Open ac. not stated.			
T. H. Payne & Co., Aug. 14–17, '87			44 79
N. Dietzen & Bros., Aug. 14–17, '87	200 37		200 37
Small open ac., not stated.			
Union Iron Works Co., Sept. 14–17, '87			181 00
M. Block & Co., Aug. 15–18, '87	36 10		
" Aug. 5–8, '87	71 46		
			107 56
Max Sax, cashier, July 28–30, '87			3,000 00
Standard Oil Co., Aug. 18–21, '87	90 86		90 86
Small open ac., not stated.			
Hollins' Sons & Co., Aug. 20–23, '87			291 25
60 McComb, Hawke & Hagg, Aug. 7–10, '87			73 05
Jackson & Trigg, Aug. 2–5, '87	652 99		652 99
Open ac. not stated.			
J. C. Bernard, July 26, '87, note			300 00
John Crudup, about			4,000 00
Sundquist M'f'g Co., open ac.			28 75
Rosenau, Crutchfield & Co., ac.			202 43
Smartt Bros. & Co., ac.			110 95
Cin., N. O. & T. P. R'y Co., ac.			275 48
Crandal & Morrison, ac.			3 75
Wasson Car & F'dry Co., ac.			7 42
Chattanooga Furniture Co.			16 00
T. J. Lloyd, ac.			18 00
W. H. McLemare, ac.			8 00
Mrs. Jones, at Daisy, Tenn., note			200 00
Pickens & Hayer, ac.			29 25
D. G. Crudup & Co.			39,269 77
J. G. Aydelott, about			2,000 00
			74,044 93

Gibson & Lee M'f'g Co., amount not known.
Simpson Bros., ac. am't not known.
Chattanooga Times, " "
Chattanooga Commercial, " "
T. T. Wilson, " "
Lookout Broom Co., " "
Ford, Eaton & Co., " "
J. M. Deardorff & Son, " "
Carter, Magill & Ewing, " "
Cassity Oil Company,
Gilmer Bros. & Bissinger,
Loomis, Hart & Co.,
Trexel & Dunmeyer,
61 G. W. Wheland ac.
E. H. Traxell "
J. M. Stone & Co.
N. C. Ford & Co.
D. L. Duncan

These are small amounts not definitely known, but will be supplied.

Pay roll due at Daisy, Tenn., not definitely known, but about $1,200 00

$75,244 93

Fritz & Wiehl, am't not known, about 7 00

$75,251 93

STATE OF TENNESSEE, }
Hamilton County. }

The above assignment and certificate were filed for registry 30 July, 1887, at 11.50 a. m., entered in Note Book No. 5, page 32, and recorded in Book G, volume 3, page 296 *et seq.*

Witness my hand at office in Chattanooga.

H. C. BECK, *Register*,
Per J. K. HODGES, *D. Reg.*

STATE OF TENNESSEE, }
Hamilton County. }

I, J. K. Hodges, dep. register for H. C. Beck, register, do hereby declare that the foregoing twenty-two pages and seventeen is a full, true, and correct copy of the deed or assignment from D. G. Crudup *et al.* to T. H. Ewing and W. E. Basket, trustees, together with certificates of probate and registration, as the same remains of record in my office in Book "G," vol. 3, page 296 *et seq.*

Witness my hand, at office, in Chattanooga, this 4 April, 1888.

H. C. BECK, *Register*,
Per J. K. HODGES,
Dep. Register.

62 For and in consideration of ten dollars ($10.00) and other valuable consideration, the receipt of which is hereby acknowledged, I, John Crudup, do hereby transfer and convey unto

Theodore Richmond the following lots or parcels of land, being lots numbers thirteen (13), fourteen (14), and fifteen (15) of Bluff View addition to Chattanooga, Tenn., being same conveyed to me by said Sam'l R. Read, trustee, to have and to hold said lots above conveyed to the said Theodore Richmond, his heirs and assigns, in fee simple forever.

Witness my hand and seal this Sept. the 2d, 1887.

JOHN CRUDUP.

STATE OF TENNESSEE, }
Hamilton County. }

Personally appeared before me, J. A. Smith, notary public for said county, John Crudup, the within-named bargainors, with whom I am personally acquainted, and who acknowledged that they executed the within-named instrument for the purposes therein contained.

Witness my hand, at office, this 3rd day of Sept., 1887.

[James A. Smith, Notary Public, Hamilton County, Tenn.]

J. A. SMITH,
Notary Public.

STATE OF TENNESSEE, }
Hamilton County. }

The above deed and certificate were filed for registry on the 5th day of Sept., 1887, at 1 p. m., entered in Note Book No. 5, page 50, and recorded in Book G, vol. 3, pages 609 *et seq.*

Witness my hand at office in Chattanooga.

H. C. BECK, *Register*,
Per J. K. HODGES,
Dep. Register.

63 STATE OF TENNESSEE, }
Hamilton County. }

I, J. K. Hodges, dep. register for H. C. Beck, register, do hereby certify that the foregoing one page and eight lines is a full, true, and correct copy of the deed from John Crudup to Theodore Richmond, together with certificates of probate and registration, as the same remains of record in my office, in Book "G," vol. 3, pages 609 *et seq.*

Witness my hand at office in Chattanooga.

H. C. BECK, *Register*,
Per J. K. HODGES, *Dep. Reg.*

D. G. CRUDUP was examined as a witness for the defendant and stated: At the time the notes in suit were signed and discounted I was engaged in the business of mining iron ore in the vicinity of Chattanooga, Tennessee. I was a member of the firms of D. G. Crudup & Co. and Tabler, Crudup & Co., and also interested in the Tabler-Crudup Coal and Coke Company, a corporation. Myself and Mr. Tabler constituted the two firms above named, and we two owned about all of the stock of said corporation. It was substantially all one business, the different branches being conducted by the two firms and said company. We had been customers of the

plaintiff bank for about two years before the notes in suit were negotiated. The notes were negotiated for our benefit. They were made by defendant Gordon for an accommodation. He received
64 none of the money realized from the discount of them and got no benefit at all from them. He was living at Decatur, Alabama, at that time. He was never a customer of plaintiff that I know of. The money realized on the notes was placed to our credit at the bank and was used in the business conducted by said two firms and said corporation. Those two firms and that corporation on July 30th, 1887, made the assignment, a copy of which is in evidence, to W. E. Baskette and T. H. Ewing. The assignment was executed by myself. Our indebtedness, viz., D. G. Crudup & Co., Tabler, Crudup & Co., and the Tabler-Crudup Coal & Coke Company, to the plaintiff at that time, without computing interest, amounted to eleven thousand six hundred dollars. The property conveyed by that assignment was worth considerably more than our whole indebtedness. Shortly after the assignment was made Mr. Ewing, one of the assignees, died. The other assignee, W. E. Baskette, was then and still is the cashier of the plaintiff. He declined to accept the trust or act as assignee. After that assignment was made our creditors had several meetings. The plaintiff bank was represented at these meetings, either Mr. Hart or Mr. Baskette being present each time. Defendant's counsel asked witness to state what was done by the creditors at the meetings of the creditors at which plaintiff was represented and in which its officers participated in regard to the assignment of July 30th, 1887. Plaintiff's
65 counsel objected to this question. The court sustained the objection and defendant duly excepted. Defendant offered to prove by witness that the creditors, including plaintiff, agreed that, as the property conveyed by the assignment of July 30th was more than sufficient to pay all the debts, and as they desired to save the assignors all unnecessary expense, the property conveyed by that assignment should be reconveyed to the assignors, and they should make other arrangements for securing the various creditors, and that in pursuance of such agreement they did make other arrangements. The court refused to allow defendant to make this proof and defendant duly excepted to this ruling. The court held that what was said & done by the plaintiff in connection with the other creditors in regard to the general assignment and in regard to reconveying the property and agreeing to take other security could not be proved in defense to this action unless it was shown, or could be shown, that the plaintiff, in connection therewith, agreed to extend the payment of the notes sued on, or to forbear the enforcement of such payment for some period of time. On motion of pl'ff's att'y the court excluded all evidence above set forth as to what was done by the creditors, including plaintiff, under said assignment of July 30th, 1887, and the defendant duly excepted to this ruling.
66 The court ruled out and excluded from the consideration of the jury the reconveyance of W. E. Baskette to said assignors of the property conveyed by said assignment of July 30th, and defendant duly excepted. The court ruled out and excluded from the

consideration of the jury said assignment, dated October 1st, 1887, and defendant duly excepted to this ruling. Witness further stated that shortly after the meetings of the creditors above referred to I called on Mr. Hart, the president of plaintiff bank, to arrange for furnishing security for our indebtedness to the bank. The bank already held as security for one account with it a receipt for five thousand dollars, paid in by us to a land company at Chattanooga. Such receipt entitled the holder thereof to receive that amount of the stock of said company. I had a conversation with Hart in regard to securing our indebtedness of about $11,600.00. I stated to Mr. Hart that my father, John Crudup, had three lots in Bluff View addition to Chattanooga, and proposed to secure the endebtedness to the bank with this property. Mr. Hart agreed to accept this security for the bank. I asked him what time would be given on the debt being secured; he named twelve months time, and this was agreed upon between us. He directed me to go to Judge Clark, an attorney in Chattanooga, and get him to prepare the necessary papers and have the matter arranged. I went to see
Judge Clark and he suggested that John Crudup deed
67 the lots in question to Clark's partner, Theodore Richmond,
and that Richmond should execute a separate defeasance, showing that he held the property so conveyed to him for the use and benefit of the bank, and the deed and defeasance were accordingly executed. The papers were executed in triplicate. I received copies of both. Richmond retained copies and the bank received copies. My father, John Crudup, had been offered twelve thousand dollars for the three lots conveyed to Theodore Richmond, but I do not suppose they were worth as much as that at the time the deed was made.

On cross-examination witness stated: I handed the deed of John Crudup to Richmond. He gave me a copy of the defeasance for myself and one for the bank. I went to the bank and handed the copy to either Baskette or Hart, both of them being officers of the bank. I think I handed it to Mr. Baskette. This was at the time of its execution. In my interviews with Mr. Hart I don't think I mentioned to him that the Gordon notes were accommodation paper. We gave the stock receipt above referred and the deed, with the defeasance, for the security of our entire indebtedness, viz: Of D. G. Crudup & Co., Tabler, Crudup & Co., and the Tabler-Crudup Coal & Cake Co., with the bank. That indebtedness amounted to $11,600.00. In the interviews with Hart the Gordon notes were not
specifically referred to in speaking of the matter of securing
68 our indebtedness. No part of the indebtedness was specially
referred to. I remember having had a talk with Mr. Aydelotte, in which I expressed to him our desire to secure our indebtedness to the bank; and after that conversation I saw Mr. Hart and made the arrangement with him about giving the security for that indebtedness. In speaking of the value of the lots conveyed by John Crudup, Mr. Hart, at the time the three lots were offered as security, stated that he supposed they were worth then seven thousand five hundred or eight thousand dollars.

On examination in rebuttal witness stated that the security was given for the whole indebtedness of $11,600.00, which included the two Gordon notes. That indebtedness was made up by perhaps half a dozen different notes. In the conversation with Hart none of these notes were especially referred to. The two Gordon notes sued on are specially named in the schedule attached to the first assignment as being included in our indebtedness of $11,600.00 to the plaintiff. There was no agreement made with Hart or with the bank other than as shown by the defeasance executed by Richmond. The only agreement between us was made before that instrument was executed, & is shown by it. My understanding was that upon the security being given we should have an extension of twelve months on the whole indebtedness, and that no suit could be
69 brought thereon against us for twelve months. The plaintiff has not sued us on any of the indebtedness. The five-thousand-dollar receipt from the land company, of which I have spoken, was deposited with plaintiff perhaps before the notes sued on were discounted. At the time the security on the three lots was given the plaintiff held that receipt. The stock of the land company did not have a market value at that time that I know of.

The defendant, E. C. GORDON, was examined as a witness in his own behalf and testified as follows:

I live in Alabama. I signed and endorsed the notes sued on for the accom-odation of D. G. Crudup & Co. I received nothing at all for the notes, and got no benefit from the discount of them. I have never had any business transactions with plaintiff. After the notes were due, plaintiff wrote to me demanding payment. In reply to one of its letters, I wrote to the bank informing them that I made the notes for the accom-odation of D. G. Crudup & Co. and stating that it was their debt. This was within a month after the notes were due. I do not recollect asking the bank for any extension for D. G. Crudup & Co. or Tabler, Crudup & Co. on the notes; have never requested any extension for myself. I knew nothing about the plaintiff granting any extension on the indebtedness represented by the notes sued on. Whatever agreement the bank made
70 in regard to taking security for the debt or in regard to granting extension thereon was wholly without my knowledge or consent. I was not consulted on the subject and never agreed that the plaintiff should accept security or grant any extension on the indebtedness.

Here the defendant closed.

JOHN A. HART testified in rebuttal for plaintiff as follows: The plaintiff never accepted any assignment, deed, or mortgage for the security of the notes sued on and never agreed to any extension on those notes. Witness was present at the meeting of the creditors under the first assignment, and when he found that the Gordon notes were included in the statement of the indebtedness of the two firms & the corporation above named to plaintiff, witness objected to the Gordon notes being included in the statement of that indebtedness. I never saw the deed to Theodore Richmond or his defeas-

ance until day before yesterday. The bank looked alone to the defendant, Gordon. Mr. Clark, who prepared the Richmond deed and defeasance, is not plaintiff's attorney. I don't think plaintiff has ever had any legal business done by him. Mr. Crudup said his father could secure the bank with the three lots in Bluff View addition. This was for their indebtedness of sixty-five hundred or seven thousand dollars, and did not include the Gordon notes sued on.

71 The plaintiff never agreed to extend the Gordon notes, or any other notes of Crudup & Co., twelve months, nor did witness have any understanding or agreement with Crudup or with Clark for the extension of the Gordon notes, but that his conversation and understanding related alone to the securing of the indebtedness of about $6,500 owing by the two firms and corporation above named.

On cross-examination witness stated that on September 2nd, 1887, the indebtedness of D. G. Crudup & Co., Tabler, Crudup & Co., and the Tabler-Crudup Coal and Coke Company to the plaintiff amounted to $6,500.00 or $6,700.00. Plaintiff's books are not here to be shown in evidence, but they do not show an indebtedness of $11,600.00, because the Gordon notes did not appear on the books of the bank as part of the indebtedness of the two firms and the corporation. I heard of the deed made by John Crudup to Theodore Richmond within a week or ten days after it was made, and knew that Richmond had the property conveyed to him for the use and benefit of plaintiff, but never saw the deed or defeasance until day before yesterday and had no idea that it proposed to secure the Gordon notes or anything more than the indebtedness of about $6,500 above named. I do not know what a defeasance is. When I was preparing to come to this trial I went to the public records and got a copy of the deed made to Theodore Richmond. Mr. Crudup

72 did not deliver the deed and defeasance to me. He did not deliver them to Mr. Baskette on or about the 2nd of September, 1887, as Mr. Baskette was absent from Chattanooga just at that time and remained absent for more than two weeks. We discounted the notes on the strength of the defendant's endorsement and looked to him alone for their payment.

This was all the evidence.

Thereupon the court charged the jury orally. The defendant requested the court to give the jury the following written charge:

"The circumstance that no suit has been brought by plaintiff against Crudup & Co. is such a circumstance as should be considered by the jury in connection with all the other evidence in the case in determining whether an agreement was made between the plaintiff and Crudup & Co. by which an extension of time of payment on said notes was given them."

The court refused to give this charge, and to such refusal the defendant duly excepted.

Wherefore the said defendant prays that this be taken as his legal bill of exceptions in said cause upon the same being duly signed according to law by his honor H. T. Toulmin, district judge,

sitting and holding court as circuit judge, who presided in the trial of said cause.

Tendered and approved this the 10th day of May, 1888, within thirty days after the adjournment of said court, in accord-
73 ance with the written agreement of the parties on file in said court.

Witness my hand this 10 May, 1888.

HARRY T. TOULMIN,
Judge Presiding.

Endorsed: Eugene C. Gordon, plaintiff in error, *vs.* The Third National Bank of Chattanooga, def't in error. Filed in clerk's office May 11, 1888. A. W. McCullough, clerk.

UNITED STATES OF AMERICA,
Northern District of Alabama.

I, A. W. McCullough, clerk of the circuit court of the United States of America in and for said district, do hereby certify that the above and foregoing pages, from one to seventy-three, inclusive, contain a true, full, and complete transcript of all proceedings had in this court in cause numbered 1441—The Third National Bank of Chattanooga *vs.* E. C. Gordon—as fully as the same does appear on file and of record in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court, at office, in the city of Huntsville, in said district, this 24th day of August, A. D. 1888.

Seal Circuit Court U. S., N. D. of Alabama.

A. W. McCULLOUGH,
Clerk U. S. Cir. Court, Nor. Dist. of Alabama.

74 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the circuit court of the United States for the northern division of the northern district of Alabama, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, between The Third National Bank of Chattanooga, Tennessee, and Eugene C. Gordon, a manifest error hath happened, to the great damage of the said E. C. Gordon, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that
75 error what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Samuel F. Miller, senior associate justice having precedence, the chief-justiceship being vacant, of the said Supreme Court, this 14th day of April, in the year of our Lord one thousand eight hundred and eighty-eight.

[Seal Circuit Court U. S., N. D. of Alabama.]

A. W. McCULLOUGH,
Clerk of the Circuit Court of the United States for the Northern District Alabama.

Allowed by—
HARRY T. TOULMIN,
Dist. Judge, Presiding in the Circuit Court.

76 [Endorsed:] Eugene C. Gordon, pl'ff in error, *vs.* Third National Bank of Chattanooga, Tenn., def't in error. Writ of error. Filed in clerk's office this 17th day of April, A. D. 1888. A. W. McCullough, clerk.

A copy of the within writ of error was lodged in my office for said The Third National Bank, defendant in error, on the 23d day of April, 1888, and within sixty days, Sundays excluded, after the rendering of the judgment in said cause.

A. W. McCULLOUGH, *Clerk.*

77 The United States of America to The Third National Bank of Chattanooga, Tennessee, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern division of the northern district of Alabama, wherein Eugene C. Gordon is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Harry T. Toulmin, judge of the circuit court of the United States for the northern division of the northern district of Alabama, this 14th day of April, in the year of our Lord one thousand eight hundred and eighty-eight.

HARRY T. TOULMIN,
Dist. Judge Presiding.

78 [Endorsed:] 297. Eugene C. Gordon, pl'ff in error, *vs.* Third Nat. B'k of Chattanooga, Tenn., def't in error. Original citation. Filed in clerk's office this 17th day of April, A. D. 1888. A. W. McCullough, clerk.

Rec'd in office Ap'l 23d, 1888.

A. H. KELLER, *U. S. M.*

Executed by serving a copy on Judge Richardson, att'y for plaintiff, 3rd Nat. Bank of Chattanooga, in Huntsville, Ala., Apr. 23d, 1888.

A. H. KELLER, *U. S. M.*,
Per GEO. P. TURNER, *Dep'ty.*

79 In the Supreme Court of the United States.

E. C. GORDON, Plaintiff in Error,
vs.
THE THIRD NATIONAL BANK OF CHATTANOOGA, TENNESSEE, Defendant in Error. } In Error.

From the circuit court of the United States for the northern division of the northern district of Alabama, of October term, in the year of our Lord one thousand eight hundred and eighty-eight.

Afterwards, to wit, on the second Monday of October, in this same term, before the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, comes the said E. C. Gordon, by Milton Humes and R. W. Walker, his attorneys, and says that in the record and proceedings aforesaid there is manifest error in this, to wit:

1. In does not affirmatively appear from the record that the court below had jurisdiction of the case.

2. There is also error in this, to wit: It does not appear sufficiently from the record that the court below had jurisdiction of the case.

3. There is also error in this, to wit: It appears from the record that the court below had no jurisdiction of the case.

4. There is also error in this, to wit: The record does not
80 contain any allegation or proof of the citizenship of the parties requisite to give the court below jurisdiction of the case.

5. There is also error in this, to wit: The court below erred in overruling the first ground of demurrer to the declaration of the plaintiff below.

6. There is also error in this, to wit: The court below erred in overruling the second ground of demurrer to the declaration of the plaintiff below.

7. The court below error in overruling the third ground of demurrer to the declaration of the plaintiff below.

8. The court below erred in overruling the fourth ground of demurrer to the declaration of the plaintiff below.

9. The court below erred in overruling the demurrer to the declaration of plaintiff below.

10. The court below erred in overruling the objection of defendant below to the introduction in evidence of the instrument in writing dated Feb'y 15th, 1887, payable sixty days after date.

11. The court below erred in overruling the objection of the defendant below to the introduction in evidence of the instrument in writing dated Feb'y 15th, 1887, payable ninety days after date.

12. The court below erred in overruling the motion of defendant below to exclude the instrument in writing first offered in evidence.

13. The court below erred in sustaining the objection of
81 plaintiff below to the question asked the witness D. G. Crudop "to state what was done by the creditors at the meetings of the creditors at which plaintiff was represented, and in which its officers participated, in regard to the assignment of July 30th, 1887."

14. The court below erred in refusing to allow the defendant below to prove by the witness, D. G. Crudop, "that the creditors, including plaintiff, agreed that as the property conveyed by the assignment of July 30th was more than sufficient to pay all the debts, and as they desired to save the assignors all unnecessary expense, the property conveyed by that assignment should be reconveyed to the assignors, and they should make other arrangements for securing their various creditors, and that in pursuance of such agreement they did make other arrangements."

15. The court below erred in excluding all evidence as to what was done by the creditors, including plaintiff below, under said assignment of July 30th, 1887.

16. The court below erred in excluding the reconveyance of W. E. Baskette to said assignors of the property conveyed by the assignment of July 30th, 1887.

17. The court below erred in refusing to give the written charge requested by the defendants below.

And the said E. C. Gordon prays the judgment aforesaid may be reversed, annulled, and altogether held for nothing, and that he may be restored to all things which he hath lost by occasion of the said judgment.

MILTON HUMES,
R. W. WALKER,
Attorneys for Plaintiff in Error.

Filed in clerk's office Sept. 24th, 1888.
A. W. McCULLOUGH, *Clerk.*

82 Comes the defendant in error, The Third National Bank of Chattanooga, Tennessee, and says that there is no error, either in the record and proceedings aforesaid or in the giving of the judgment aforesaid, and prays that the judgment aforesaid, in form as aforesaid given, may be in all things affirmed.

WILLIAM RICHARDSON,
Att'y for Third Nat'n'l Bank,
Chattanooga, Tenn., D'f'd't in Error.

Endorsed on cover: N. Alabama C. C. U. S. No. 176. Eugene C. Gordon, plaintiff in error, *vs.* The Third National Bank of Chattanooga, Tennessee. Filed October 8, 1888.

BRIEF.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

No. 176.

EUGENE C. GORDON, PLAINTIFF IN ERROR,

vs.

THE THIRD NATIONAL BANK OF CHATTANOOGA, TENNESSEE.

T. D. YOUNG,

MILTON HUMES,

OF COUNSEL FOR PLAINTIFF IN ERROR.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

No. 176.

EUGENE C. GORDON, PLAINTIFF IN ERROR,

vs.

THE THIRD NATIONAL BANK OF CHATTANOOGA, TENNESSEE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ALABAMA.

In this cause the Defendant in Error sues the Plaintiff in Error on two promissory notes executed by him and made payable to the order of himself, and alleged to have been endorsed by him by means of which he has become liable to pay the same. See Declaration Record; pages 1 and 2. The Defendant in the court below interposed the general issue and five special pleas: By special pleas he made three grounds of defense: First, that said notes were merely accommodation paper for the use and benefit of D. G. Crudup & Co., and that the Plaintiff after notice thereof, and without Defendant's consent, for a valuable consideration, agreed with the said D. G. Crudup & Co., to extend the time of payment of said notes to the 2nd day of September, 1887, and thence to the 2nd day of September 1888, in consideration of the deed of John Crudup to T. Richmond (see Record, page 34) and the seperate defeasance of T. Richmond (see Record. page 18); and (second) that he did not endorse said notes in manner and form as the said plaintiff has set forth in his said declaration; and (third) that long after the maturity of the notes sued on, which were executed without other consideration than that of accommodation paper for the use of said D. G. Crudup & Co., of which plaintiff then and there had notice, the said D. G. Crudup & Co., by deed of general assignment for the benefit of all their creditors and for the payment of said notes, conveyed a large amount of personal property, real property and choses in action to W. E. Baskette and T. H. Ewing, as trustees, with full and ample powers to collect, sell and dispose of said property, and pay off all their indebtedness, including said notes, and that thereafter the said Plaintiff, with notice aforesaid and without the knowledge or consent of said Defendant, agreed with the said D. G.

Crudup & Co., in consideration, among other things, of enabling the said D. G. Crudup & Co., to effect a general compromise with all their other creditors,, to waive its right to have the payment of said notes made by the trustee under said general deed of assignment, notwithstanding the property aforesaid so conveyed was of sufficient value and could have been disposed of by said trustees for an amount largely in excess of what would have been necessary to have satisfied and discharged all their indebtedness, including the said notes sued upon. (See Pleas of Defendant, Record, pages 7, 8 and 9].

The proof shows that soon after the maturity of said notes sued upon, to-wit: July 30, 1887, D. G. Crudup & Co., Tabler, Crudup & Co., and Tabler-Crudup Coal & Coke Co., the two first partnerships composed of D. G. Crudup and J. H. Tabler, the parties for whose accommodation said notes were executed under the firm name of D. G. Crudup & Co., and the third, a corporation created under the general laws of the State of Tennessee, of the stock of which the said Tabler & Crudup were the entire owners, or nearly so, each and all made general assignments, in one instrument for the benefit of their respective creditors. See Record, pages 24 to 28 and schedule following.

Said notes were provided to be paid out of the proceeds of the property assigned. See Record, page 32. "Third National Bank including Gordon notes $11,600.00."

The evidence shows that the indebtedness of all three of said concerns to the Plaintiff Bank, as shown by its books, was only about $6,500.00 or $6,700.00. "They do not show $11,600.00 because the Gordon notes do not appear on the Bank's books as indebtedness of either of the firms or the Corporation." See evidence of John H. Hart, Record, pages 38-39.

The deed to T. Richmond and the defeasance back was given to secure "the whole indebtedness, $11,600.00" to plaintiff, "including the Gordon notes." See testimony of C. D. Clark and D. G. Crudup, Record, pages 17 and 38.

It is to be noted that the said general assignment bears date July 30, 1887 [See Record, page 28] while the deed from John Crudup to T. Richmond [See Record page 34] and the defeasance back by T. Richmond each bear date September 2, 1887. See Record, page 18.

Now it was the object of Defendant to prove, and he offered to prove, in support of his said special plea, that after the execution of said general assignment, the death of F. H. Ewing, one of the assignees therein, and the declination of W. E. Baskett, the surviving assignor, to act, that Plaintiff, through its officers, at a meeting of the beneficiary creditors under said assignment, notwithstanding there was more than sufficient assetts to pay all of the indebtedness of all the assignors agreed to an annullment of said assignment and to take other security, and in pursuance thereof the said deed to T. Richmond, (See record page 34) and the latter's defeasance back (See record page 18) were executed specially to secure the entire indebtedness of the said assignors to plaintiff, amounting to $6,500.00

or $6.700.00 without the Gordon notes here sued on, and with them amounting to $11.600.00.

The court declined to allow the defendant to make this proof (See testimony of D. G. Crudup, Record, page 36), holding "that what "was done and said by the Plaintiff in connection with the other "creditors in regard to the general assignment and in regard to re- "conveying the property and agreeing to take other security, could "not be proved in defense to this action, unless it was shown or "could be shown that the Plaintiff in connection therewith, agreed "to extend the payment of the notes sued on or to forbear the en- "forcement of such payment for some period of time," and excluded all proof on the subject from the jury. This, notwithstanding the said defeasance executed by the said T. Richmond (See Record, page 18,) which provides: "It is agreed that I shall hold said real "estate for twelve (12) months, unless sooner sold by direction of "D. G. Crudup, and if said Bank debts, $11,600.00, is not then paid, "the lots to be sold, etc., etc." The court by thus holding committed the error of refusing to allow proof to sustain the said first and third grounds of said special pleas, and erroneously construed said deed to Richmond and his defeasance not to mean an agreement to extend the time of the payment of said notes for the period of twelve (12) months, if not sooner voluntarily paid. This too in the face of the oral testimony as to what the consideration of said deed and defeasance was as follows, towit:

Said witness Clark says that at the time said instrument "was ex- "ecuted it was distinctly agreed that the payment of the indebted- "ness sued on was thereby and in consideration thereof, postponed "for twelve (12) months thereafter." And said witness Crudup says: "Mr. Hart agreed to accept this security for the Bank. I ask- "ed him what time would be given on the debt being secured, he "named twelve months time and this was agreed upon between us." See Record, page 37. "My understanding was that upon the se- "curity being given we should have an extension of twelve (12) "months on the whole indebtedness and that no suit could be "brought thereon against us for twelve months. The Plaintiff "has not sued us on any of the indebtedness."

And said witness Gordon testifies he never was consulted about the Plaintiff's extending time for the collection of the notes sued on and never agreed thereto, and that soon after it became due, he notified the Plaintiff that he was only an accommodation maker of the said notes. See record page 38.

The Defendant insisted on the trial, and still insists that he was and is released from liability on said notes for the reason that after he had indorsed them in blank, and when they were endorsed to Plaintiff by D. G. Grudup & Co., the Plaintiff stamped above his "name without his knowledge or consent: "Demand protest and "notice of protest waived and payment guaranteed within five days. See testimony of John A. Hart, [record page 15,] where he says:

"At the time the notes were discounted there was nothing on the "back of either of them but the signature of E. C. Gordon and D. G. "Crudup & Co. The words on the back of the notes besides those sig-

"natures were stamped thereon, when the notes fell due, at the re-"quest of Crudup & Co., to save protest fees and costs. Crudup & Co., "agreed to waive demand, protest and notice and guaranty payment in "the words expressed on the back of the notes, The Defendant had "nothing to do with the agreement stamped on the back, he was not "informed thereof."

On the introduction of this proof the Defendant moved the Court to exclude the notes from the consideration of the jury, because the same showed a material alteration of the Defendant's contract of endorsement and because there was a variance between the notes sued upon and those introduced in proof; this the Court refused, and Defendant excepted. See Record, pages 15 and 16.

Defendant also insisted he was not and is not liable on the notes sued on because of the Plaintiff's agreeing to annullment of the said general assignment under which, as the proof shows, there was property sufficient conveyed to pay all of the debts of the assignor, including the notes sued on; and because of Plaintiff's taking the security aforesaid in the shape of an absolute deed to T. Richmond with a defeasance back and in consideration thereof extending the time of the payment of said notes for twelve months as appears from the face of said defeasance and the other testimony in the case in reference thereto.

The Jury having rendered a verdict for Defendant in error for the face of said note with interest, and the Court having rendered its Judgement therefore, Plaintiff in Error prayed a writ of Error in this Court etc., and has assigned 17 grounds of error. See Record pages 42 and 43.

The 1st, 2nd, 3rd and 4th grounds of error assigned are to the effect that the record in the cause does not affirmatively show the requisite citizenship of the parties to give the Court below jurisdiction of the same.

The declaration after alleging the Plaintiff to be a Corporation created under the general laws of the United States under the style and name of the "Third National Bank of Chattanooga," states that it is "doing business as bankers in the city of Chattanooga, State of Tennessee" "And claims of the Defendant, E. C. Gordon, "who resides in the county of Limestone, State of Alabama, in the "Northern Division of the Northern District of the State of Alaba-"ma, the sum of $5000.00, etc."

John A. Hart in his testimony, see Record, page 15, says, "I am "President of the Plaintiff Bank which does business in Chattanoo-"ga, Tenn." "After the notes were due, we gave notice to the "Defendant at Decatur, Ala., where he was then residing and de-"manded payment of him, which was refused." See Record, page 16.

D. G. Crudup says in his testimony, see Record, page 36, "He [E. C. Gordon] was living at Decatur, Ala., at that time."

E. C. Gordon in his testimony says: "I live in Alabama." This is all that the record shows on this subject, and it is insisted that under the decision of this Court in the case of Grace et al. vs. American Central Insurance co., 109th U. S. Report, page 278, and the

authority cited that this cause should be dismissed for want of jurisdiction in the Court. In this case referred to, the court in its opinion said: "The record in this case presents a question of jurisdiction which, although not raised by either party in the Court "below or in this court, we do not feel at liberty to pass without "notice. Sullivan vs. Fulton Steamboat Co., 6 Wheat, 450; Jackson vs. Ashton, 8 Pet. 148. As the jurisdiction of the Circuit "Court is limited; in the sense that it has no other jurisdiction "than that conferred by the Constitution and laws of the United "States, the presumption is that a cause is without its jurisdiction "unless the contrary affirmatively appears. Turner vs. Bank of "North America, 4 Dall. 8; Ex parte Smith, 94 U. S. 455; Robertson vs. Cease, 97 U. S. 646."

"In the last case it is said 'where jurisdiction depends upon the "citizenship of the parties, such citizenship, or the facts which in "legal intendment constitute it, should be distinctly and positively "averred in the pleadings, or they should appear affirmatively and "with equal distinctness in other parts of the record.' Railway Co. "vs. Ramsay, 22 Wal. 322; Briges vs. Sperry, 95 U. S. 401. In "Brown vs. Keene, 8 Pet. 112, it is declared not to be sufficient "that jurisdiction may be inferred argumentatively from averments "in the pleadings; that the averments should be positive."

"The present case was commenced in the Supreme Court of New "York, and was thence removed, on the petition of the defendant, "to the Circuit Court of the United States for the Eastern District "of New York. The record does not satisfactorily show the citizenship of the parties. The complaint filed in the State court "shows that the firm of Wm. R. Grace & Co., composed of Wm. R. "Grace, Micheal P. Grace and Chas. R. Flint, is doing business "in New York, and that Wm. R. Grace and Charles R. Flint are "residents of that State."

"The petition for the removal of the cause shows that the defendant is a corporation of the State of Missouri; that Wm. R. "Grace and Chas. R. Flint reside in New York; and that Micheal "P. Grace is a resident of some State or country unknown to defendant, but other than the State of Missouri. The record, however, fails to show of what State the plaintiffs are citizens. They "may be doing business in and have a residence in New York "without, necessarily, being citizens of that State. They are not "shown to be citizens of some State other than Missouri. Bigham vs. Cabot, 3 Dall. 382; Abercrombie vs. Dupuios, 1 Cranch, "343; Jackson vs. Twentyman, 2 Pet. 136; Sullivan vs. Fulton "Steamboat Co., 6 Wheat. 450; Hornthall vs. Collector, 9 Wall, 560; "Brown vs. Keene, supra.; Robertson vs. Cease, supra."

"It is true that the petition for removal, after stating the residence of the plaintiffs, alleges 'that there is and was at the time "when this action was brought, a controversy therein between citizens of different States.' But that is to be deemed the unauthorized conclusion of law which the petitioner draws from the facts "previously averred. Then there is the bond given by the defendant on the removal of the cause, which recites the names of the

"firm of Wm. R. Grace & Co., and describes it as 'of the county "of Kings and State of New York."

"If that bond may be considered as part of the record for the pur- "pose of ascertaining the citizenship of the parties, the averment "that the plaintiffs are 'of the county of Kings and State of New "York' is insufficient to show citizenship. Bigham vs. Cabot, 3 "Dall. 332; Wood vs. Wagnon, 2 Cranch, 9; Jackson vs. Ashton, "supra."

The 10th and 11th assignment of Error are to the effect that the Court erred in overruling Plaintiff in Error's motion to exclude the introduction of the two notes sued on, because Plaintiff in putting said words "Demand, protest and notice of protest waived and pay- "ment guaranteed within five days from date of maturity."

E. C. GORDON,
D. G. CRUDUP & CO.

on the back of them, above Defendant's signature, without his knowledge or consent, and because of variance between the instrument described in complaint and said instrument offered in evidence. See testimony of John A. Hart, record, page 15: "Mr. Tabler, of "the firm of Tabler, Crudup & Co., brought the notes to the Bank, "at that time there was nothing on the back of the notes but the "signature of the Defendant, E. C. Gordon. Several days after "the notes were brought to the Bank they were endorsed by D. G. "Crudup & Co., and we then discounted them for D. G. Crudup & "Co., and the amount for which they were discounted was placed "to the credit of D. G. Crudup & Co., with the Plaintiff Bank.

"The words on the back of the notes, besides those signatures, "were stamped thereon, when the notes fell due at the request of "D. G. Crudup & Co., to save protest fees and cost * *

"The Defendant had nothing to do with the agreement stamped on "the back, he was not informed thereof." See following authority:

"Any change in the terms of a written contract which varies its "original legal effect and operation, whether in respect to the ob- "ligation it imports, or to its force as matter of evidence, when "made by any party to the contract, is an alteration thereof, unless "all the other parties to the contract gave their express or implied "consent to such change. And the effect of such alteration is to "nullify and destroy the altered instrument as a legal obligation." —2 Daniel on Neg. Inst., Sec. 1373 [third edition.]

The 13th, 14th and 15th grounds of assignment of Error are to

the effect that the Court erred in sustaining the objection of Defendant in Error to the question asked the witness, D. G. Crudup, who having stated: "After that assignment was made our creditors had "several meetings, the Plantiff's bank was represented at these "meetings * * * Defendant's counsel asked witness "to state what was done by creditors at the meeting of creditors at "which Plaintiff was represented and in which its officers partici- "pated, in regard to the assignment of July 30, 1887." See testimony of D. G. Crudup, page 36.

Plaintiff's counsel objected and the Court sustained the same.

"Defendant then offered to prove by witness that creditors, in- "cluding Plaintiff, agreed that as the property conveyed by as- "signment July 30, 1887, was more than sufficient to pay our debts "and as they desired to save the assignor all expense, the property "conveyed by that assignment should be reconveyed to the assign- "ors and that they should make other arrangements for securing "the various creditors, and that in pursuant of such agreement "they did make other arrangements. The Court refused to allow "Defendant to make this proof and the Defendant then and there "excepted to this ruling."

"The Court held that what was said and done by Plaintiff in con- "nection with the other creditors in regard to the general assign- "ment, and in regard to reconveying the property and agreeing to "take other security, could not be proved in defense to this action, "unless it was shown or could be shown, that Plaintiff, in connec- "tion therewith, agreed to extend the payment of the notes sued "on, or to forbear the enforcement of such payment for some peri- "od of time. On motion of Plaintiff's attorney the Court excluded " all the evidence above set forth as to what was done by creditors, "including Plaintiff, under said assignment of July 30, 1887, and "the Defendant duly excepted to this ruling." See testimony of D. G. Crudup, page 36.

This, notwithstanding said defeasance by T. Richmond, (record page 18) which had already been introduced in evidence, provided in its face the following: "It is agreed that I shall hold said "real estate for twelve (12) months, unless sooner sold by direction "of D. G. Crudup & Co., and if said Bank debt is not then paid, "the lots to be sold in such manner as may be agreed upon by said "Bank and D. G. Crudup, and notwithstanding the testimony of "C. D. Clark, Esq., admitted as evidence by Plaintiff (See record "page 16) that at the time said assignment was executed, it was "distinctly agreed that the payment of the indebtedness sued on "was thereby and in consideration thereof, postponed for twelve "(12) months thereafter:" and, notwithstanding the testimony of D. G. Crudup aforesaid, in which he says:

"Mr. Hart agreed to accept this security for the Bank. I asked "him what time would be given on the debt being secured, he "named twelve [12] months time and this was agreed upon be- "tween us: My understanding was that upon the security being "given we should have an extension of twelve (12) months on the "whole indebtedness and that no suit could be brought thereon

"against us for twelve months: The Plaintiff has not sued us on "any of the indebtedness, (See record page 37) and notwithstand- "ing the Defendant, E. C. Gordon, testifies he never was consult- "ed about the Plaintiff's extending time for the collection of the "notes sued on and never agreed thereto, and that soon after due, "he notified the Plaintiff that he was only an accommodation mak- "er of the said notes. (See record page 38). On the subject of "this notice Mr. Jno. A. Hart says: Plaintiff had no communica- "tion with Defendant until after both notes matured, we then "wrote him several letters demanding payment. About a month "after maturity of notes, and in reply to one of these letters Plain- "tiff received from Defendant a letter in which he stated that he "signed the notes for the accommodation of Crudup & Co. Record "page 16.

The Plaintiff in Error submits the following propositions of law with citations of authority in support of same:

"If one makes a note for the accommodation of another who en- "dorses it the endorsee or holder thereof, knowing that the note was "made merely for the accommodation of the endorser, cannot accept "other security for the payment of the note from endorser and in- "dulge him without thereby releasing the maker. See P. Van Allen "Westervolt V. Theodore W. Frech et al, 33 N. J. Equity Reports, "page 451.

In this case the Court in their opinion, page 466, said: "It is an "established principal that where the creditor, knowing the surety "to be such, without his consent and without reserving his right "as against him gives time to the principal the surety is ipso "facto discharged from his liability and that too if the time be "given after the judgement recovered against both upon the con- "tract and it is also established that this doctrine applies where the "contract is that of a maker of a negotiable promissory note made "for the accommodation of the endorser.

"In the case in hand the firm of T. W. Fech & Co., leant to Cor- "nelius C. Westervelt $2,500.00 * * * On a promissory note of "that amount, which they knew was made by Complainant with- "out consideration and merely for the accommodation of the bor- "rower. Having obtained judgement against both maker and en- "dorser, the borrower then gave the latter time without the assent or "knowledge of the maker and without reserving their right to "proceed against him. He was thereby discharged."—Mr. Dani- els in his work of Negotiable Instruments.

§ 1337. "In Court of Queen's Bench, one maker of a note, who "was known to the payee to be only an accommodation maker or "surety for the others, was held to be discharged by the payee's "contracting to give time, and giving it, to the other makers, al- "though on the face of the note he was a joint principal; the de- "cision being rendered upon an equitable plea allowed by the En- "glish statute, and based upon the ground that extraneous evi- "dence to show that the defendent was surety for the other joint "promisors did not and could not vary his contract; but that the "Plaintiff knew it when he took the note, an equity was created

"which entitled him to insist on such a course of conduct by the "Plaintiff as would work him no injury. More recent decisions "have gone a step further and held that if the creditor knew the "relation of suretyship when he granted the indulgence, the sure- "ty would be discharged. This may be regarded as the law of "England on the subject." He further says, § 1335:

"There is strong authority for what seems to us the better doc- "trine that even if the holder knew at the time he received the "bill or note that it was accepted or made for accommodation, his "right and duties are in no respect altered; and no indulgence to "release of a drawer or endorser will discharge the acceptor or "maker. But there are weighty American authorities which con- "cur with the English view, that whenever it is known that a par- "ty who signs as maker or acceptor, is in fact a party for accom- "modation, he is entitled to be regarded and treated as a surety."

See also Meggett vs. Baum, 57 Miss., 22, where it is held that if party knew acceptance was for accommodation, extension of time would discharge acceptor. To same effect is Gill vs. Butler, 137 Mass. 386. As is also 17 Ohio State Report, page 159.

While there seems to have originally been some conflict in the authority on the subject, in the language of the Chancellor in his opinion in the case in 33 N. J. Report, before referred to, "We think the principle well established" in favor of the position taken.

"If the creditor has a surety for the debt, and also has a lien on "property of the principal for the security of the same debt, and "he relinquishes such lien, or by his act such lien is rendered una- "vailable for the payment of the debt, the surety is, to the extent "of the value of the lien, thus lost, discharged from liability."— Brant on Suretyship and Guaranty, Sec. 370; Winston vs. Yeargin, 50 Ala., 340.

"Whenever it is material, a party may, as to all who have notice, "by parol, show that he signed a note as surety only, although he "appears on the face of the note as principal." Pollard vs. Stanton, 5 Ala. 451.

T. D. YOUNG,

MILTON HUMES.

In The United States Circuit Court for the Northern Division of the Northern District of Alabama.

EUGENE C. GORDON, Appellant,

vs.

THIRD NATIONAL BANK OF TENNESSEE, Appellee.

Brief of Attorneys for Appellee.

IN THE UNITED STATES CIRCUIT COURT FOR THE NORTHERN DIVISION OF THE NORTHERN DISTRICT OF ALABAMA.

EUGENE C. GORDON, Appellant,

VS.

THIRD NATIONAL BANK OF TENNESSEE, Appellee.

THE Appellant, E. C. Gordon, on the 15th of February, 1887, executed, at Chattanooga, Tennessee, two notes, each for $2500.00, payable to the "order of myself," respectively sixty and ninety days after date. Each of these note was signed by E. C. Gordon, and endorsed, E. C. Gordon, D. G. Crudup & Co.

The notes were presented by D. G Crudup & Co. to the Third National Bank of Tennesse, the appellee, and by said bank were discounted in the course of ordinary business. Before said notes were due, D. G. Crudup & Co. went to the place of business of the appellee and had stamped on each note, immediately above the name of D. G. Crudup & Co., the following words: "Demand, protest and notice of protest waived, and payment guranteed within five days from maturity."

The notes were forwarded by appellee through the First National Bank at Decatur, Alabama, to Appellant and payment refused.

About one month after payment was refused, in a correspondence between appellant and appellee, the appellant stated that said notes were executed for "accomodation." and that he was not liable therefor. Appellant further claimed that he was discharged from the payment of said notes because appellee had agreed with D. G. Crudup & Co., and without appellant's consent, and for a consideration, to extend the payment of said notes. Appellee denied that such an agreement had been made.

BRIEF OF WILLIAM RICHARDSON AND DAVID D. SHELBY FOR APPELLEE.

The notes sued on in this action were each executed by E. C. Gordon, made payable to himself and endorsed by him. It is undoubtedly true that Gordon being payor and payee that

he had to endorse the notes to give them commercial value. The notes were then the promissory notes of Gordon and when so payable and endorsed is equivalent to a note payable to bearer and the maker then becomes liable both as maker and endorser. Lee and Lingdon vs Branch Bank of Mobile: 8th Porter's Alabama Reports, page 121-124: Chitty on Bills, 8 Amer., [from 8 Eng. edition] 28: Daniel on Negotiable Instruments, Chapter V. page 100: Garrett, *Et Al.* vs. Lynch Admr., 44 Ala.: 323: Miller vs. Veeks, 22nd Tenn. State Reports 89 [1853]: Wilder vs. Dewolf, 24th Ills., 190 [1860]: Roberts vs. Lane, 64 Me. 108 [1874]: Bishop vs. Rowe, 71 Me, 263: Roby vs. Phelan 118 Mass. 541: Little vs. Rodgers, 1 Metcalf, 108: Scull vs. Edm, 13 Ark. 24: Kingsley vs. Robinson, 21 Pick. 327.

All holders of negotiable paper acquiring it before maturity in the ordinary course of business are presumed to have acquired it on a valuable consideration. The *bona fide sale* and transfer of a negotiable note before maturity in the usual course of business for a valuable consideration without notice creates in the transferee a paramount right of action against the maker, and frees and discharges the note of all defects, equities and defences to which it was subject before its acquisition by the holder.

The uncontradicted and unrebutted evidence in this case shows that the Third National Bank of Chattanooga, Tennessee, purchased the notes sued on in the usual course of its banking business before maturity, and paid a valuable consideration therefor, without notice of any defense or infirmity or equity between Gordon, the maker of the notes, and Crudup & Co., endorsers.

It is not asserted nor contended by appellant, nor is there any testimony to show that the appellee, the Third National Bank, had any intimation whatever before the notes were discounted and due that Gordon executed the notes as "*accomodation paper.*" If it be true as claimed, that Gordon did execute the notes as accomodation paper, would this in any manner after the well established principles as above stated. No question is raised that the Third National Bank of Chattanooga, Tennessee, acted in bad faith or was negligent in, or that a single suspicious circumstance attended the discounting of these notes. Even if Gordon executed the notes for accomodation, yet he knew they would not answer the purpose of

their creation until the payee negotiated them. In this case Gordon made the notes payable "to the order of himself," then endorsed them, and by so doing he assumed the liability expressed on their face.

These principles are clearly established. In Murray vs. Lardner, 2nd Wallace's Reports, pages 110-122, Justice Swain stated the following principles: 1st. The possession of such paper carries the title with it to the holder. 2nd. The party who takes it before due for a valuable consideration, without knowledge of any defect of title and in good faith, holds it by a title valid against all the world. 3rd. Suspicion of defects of title or the knowledge of circumstances which would excite such suspicions in the mind of a prudent man, or gross negligence on the part of the taker at the time of the transfer, will not defeat his title.

That result can only be produced by bad faith on his part. "Such," says the court, "is the settled law of this court and we feel no disposition to depart from it." The same principles of law are recognized in Swift vs. Tyson, 16 Peters 1; Goodman vs. Simonds, 20 Howard, 343; Bank of Pittsburg vs. Chattanooga, 22 Ib., 96; Grant vs. Ellicott, 7 Wendell, 227; Brown vs. Motts, 7 Johnson's Reports, 361; Connerly & Co. vs. Planters' and Merchants' Insurance Co., 66 Alabama Reports, page 432-444; 1st Daniel on Negotiable Instruments, 796; Capitol City Ins. Co. vs. Quinn, 73 Alabama Reports, 558.

All holders of negotiable papers acquiring it before maturity in the ordinary course of business are presumed to have acquired it on a valuable consideration.

The Code of Tennessee, 1858, Chapter XV. under the title of "Negotiable and Assignable Paper." Sections 1956-1957, define what notes are negotiable and are governed by the Law-Merchant. And the two notes executed by Gordon are negotiable paper.

The next defence made by appellant in the lower court, is that Crudup & Co., the endorsers of the note, negotiated with the plaintiff about an extension of time for the payment, or further indulgence on said notes and this was done without the consent of Gordon.

An endorser for accomodation of the maker is entitled to all the privileges of the endorser by being fixed in due season. How much stronger when the maker of the notes is the endorser also as in this case. Brown vs. Mott, Supra. 4th

Cranch, 141.

If Gordon made the notes payable to himself then endorsed them and placed them in the hands of Crudup & Co., to be used by Crudup & Co. to raise money, and they were so used by Crudup & Co., it matters not whether Gordon executed the notes as accomodation paper or not, for they stand on an equality with other commercial paper, and the maker is bound primarily and unconditionally for their payment Connerly & Co. vs. Planters' and Merchants' Ins. Co., 66 Ala. (opinion of court) 440.

The incontestable, undisputed and unrebutted proof in this case is that the Third National Bank of Chattanooga, Tennessee, had no notice whatever at the time the notes were discounted, or before their maturity, that Gordon was an accomodation maker. The testimony of Gordon is pointed and clear that about one month after maturity of the notes and the presentation to him for payment through the National bank of Decatur, and his refusal to pay, he wrote to Mr. J. A. Hart, President of the Third National Bank, on the subject of the notes, and among other things wrote him that the notes were accomodation paper. It is not contended that the Third National Bank of Chattanooga had any earlier notice than this.

As to the agreement on the part of Hart, the president of the Third National Bank, with Crudup & Co. to extend the payment of the Gordon notes, Hart's testimony is positive that his agreement with Crudup & Co. did not embrace or relate to the Gordon notes.

The defeasance executed by Richmond was without Hart's knowledge and is also without consideration. In order to extend the time of payment the understanding must be mutual and specific. 13 Allen, Massachusetts Reports 72, Brooks and others vs. Wright.

Crudup in his testimony states that the agreement or understanding with Hart for extension was embraced in the written instrument prepared by Richmond. Branch Bank of Mobile vs. James and Darrington, 9 Ala. 949; Hadden, *et al.*, Exrs. vs. Brown, 18 Ala. 641.

The charge asked of the court was properly refused. Brant on Negotiable Instruments, page 401, Sec. 266; Fulton vs. Matthews, 15 Johnson, 433; Creaths, Admr. vs. Simons, 5 Howard, 192; Curtis' Decisions Supreme Court, U. S. 16 page 353.

David D. Shelby

of Counsel for Def't in Error

Office Supreme Court U. S.
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SUPREME COURT OF THE UNITED STATES.

October Term 1891.

No. 176.

EUGENE C. GORDON, Plaintiff in Error

VERSUS

THE THIRD NATIONAL BANK of Chattanooga, Tennessee.

In Error to the Circuit Court of the United States for the Northern District of Alabama.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM 1891.

No. 176.

EUGENE C. GORDON, PLAINTIFF IN ERROR,

vs.

THE THIRD NATIONAL BANK OF CHATTANOOGA, TENNESSEE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ALABAMA.

Defendant in error having filed its brief in 1888 before the record was printed, and since then Plaintiff in error having filed his brief and argument presenting the question of jurisdiction, a point not raised in the lower court, Defendant begs the indulgence of the Court, to submit a Supplemental Brief in the nature of a reply to Plaintiff's Brief.

SUPPLEMENT BRIEF FOR DEFENDANT IN ERROR.

I.

JURISDICTION.

It is not claimed that the jurisdictional *fact*—diverse citizenship,—does not exist. But it is insisted this fact does not clearly and sufficiently appear in the record.

It seems to be conceded that the record is sufficiently explicit as to the citizenship of the Defendant Bank. The declaration and proof both show it is a National Bank, organized under

the Acts of Congress, and doing a banking business in the City of Chattanooga, in the State of Tennessee.

See Declaration Record page 1.
Proof Record page 15.

Nothing else appearing in the record, these allegations are sufficient to show the citizenship of the bank within the meaning of the statute as clearly appears from the holding in the case of

U. S. Express Co. vs. Kountze Bros., 8 Wallace (75 U. S.) page 342.

See also Manufacturer's National Bank vs. Baack, 8 Blatch. 137.

Same case 2 Abb. 232.
Cook vs. Bank, 52 N. Y. Repts. 96.
Davis vs. Cook, 9th. Nevada 134.
Dillon on Removal of Causes, page 51.

St. Louis National Bank vs. Allen, 2 McCrary (U. S.) 92.

Indeed no more appropriate language could be used to show the citizenship of the corporate being, than to show by what power created, and where it does business.

Rev. Statutes U. S., Sec. 5190.

The contention, however, is that the *citizenship* of plaintiff in error, Gordon, does not sufficiently appear: that "*residence*" and where one "*lives*" is not necessarily *citizenship*, as frequently held by this Court.

On page four of plaintiff's brief, counsel undertake to set forth all the record shows upon the subject of citizenship of the parties. These citations and quotations show merely the "*residence*" of the plaintiff in error, and "*where he lived.*" We are not prepared to admit that the quotations there set forth do not show jurisdictional facts.

See U. S. Express Co. vs. Kountze Bros., 8 Wallace (75 U. S.) p. 342.

Gassies vs. Ballon, 6 Peters, p. 761.

Railway Company vs. Ramsey, 22 Wallace (89 U. S.) page 322.

Shelton vs. Tiffin, 6 Howard, p. 164.

But conceding they do not, Plaintiff's counsel have by inad-

vertence omitted to state—*all* the *record* shows on this subject. On page three of the record, in the summons, it is distinctly and positively averred that the Plaintiff in error, Gordon, is a "*citizen of the State of Alabama*," and that the defendant Bank "*is a citizen of the State of Tennessee.*"

With these positive averments appearing in the record, we think, in the light of the decisions of this court, there can be no doubt of the jurisdictional facts sufficiently appearing.

At one time, it was understood, that the jurisdictional facts must be set forth in the pleadings. But it is now well settled, that when the question is not made in the lower Court, and is sought to be raised, for the first time, in this Court, as in this case, then the court will maintain jurisdiction, if the jurisdictional facts appear *any* where in the *record*.

See RAILWAY vs RAMSEY, 22 WALLACE (89 U. S.) 322, where Chief Justice Waite not only announces this doctrine, but sustains the jurisdiction, although the record failed to show diverse citizenship, upon the supposition, that a part of the record, which was destroyed, showed the jurisdictional facts, in as much as the lower Court had entertained jurisdiction to grant the relief asked.

Railway vs. Ramsey, 22 Wallace (89 U.S.) 322.

This doctrine is clearly laid down in the case of ROBERTSON vs CEASE, 7 Otto (97 U. S.), p. 646, in the following language: "It is the settled doctrine of this court that, in cases "where the jurisdiction of the Federal Courts depends upon the "citizenship of the parties, the facts essential to support that "jurisdiction, must appear *somewhere* in the record. They need "not necessarily be averred in the pleadings. It is sufficient if "they are, in some form, affirmatively shown by the record."

Robertson vs. Cease, 7 Otto, (97 U. S.) p. 646.

In the same case it was held, that citizenship could not be proved by recitals appearing in depositions copied in the record, *because* they were not made a part of the record by *Bill of Exceptions*. If they had been made a part of the record by a Bill of Exceptions, they would have sustained the jurisdiction of the court. *Robertson vs. Cease, 7 Otto, (97 U. S.) p. 646.*

We think the foregoing authorities clearly establish the

proposition, that, if the jurisdictional facts appear *anywhere* in the record, the Court will entertain jurisdiction. Especially is this true where the parties in the lower Court made no objection to its jurisdiction.

In the *U. S. Express Company vs Kountze Bros.* this Court say: "The citizenship of the defendant is clearly enough averred. "It is alleged that the United States Express Company, the de- "fendant in the suit, is a foreign corporation, formed under, and "created by, the laws of the State of New York. The obvious "meaning of this allegation is that the defendant is a citizen of "the State of New York. The course of proceeding, in the court "below shows, that the parties to the suit recognize it as being "of federal jurisdiction, and it could only be so (as there was no "federal question involved) on the ground that the plaintiffs and "defendants were citizens of different states. If the parties had "thought otherwise, after the cause reached the circuit court, the "point would have been taken, and an effort made, at least, to test "the jurisdictional question. The record shows that nothing of "the sort was attempted."

U. S. Express Co. vs Kountze Bros.,
8 Wallace (75 U. S.) p. 342.

A summons, or original writ, is a part of the *record* according to the most technical and limited definition of "Record."

2 Vol. Thompson on Trials, secs. 2171 & 2173.

Doubtless the question of jurisdiction would not have been raised had not counsel for plaintiff in error overlooked the positive averments of the record, page 3, as to the citizenship of the parties.

II.

DEMURRER.

The 5th, 6th, 7th, 8th and 9th errors raised by the demurrer, seem to be abandoned in plaintiff's brief, and we submit show no error.

III.

OBJECTIONS TO THE NOTES AS EVIDENCE.

The notes sued on were drawn by plaintiff, payable to his own order, and indorsed by him in blank. Crudup & Co. also indorsed these notes, and discounted them with defendant bank. At maturity, to save the expense of protest, Crudup & Co. waived demand, notice and protest, which was stamped on the back of the notes above their signatures by their consent. In thus stamping the notes, by inadvertence, the stamp was placed on *one* of the notes above plaintiff Gordon's name.

See Hart's evidence, Record, pages 15 and 16.

And this it is claimed avoids the notes, because altering them in a material particular.

Plaintiff Gordon is bound on said notes as maker, and not as endorser, and no protest was necessary as to him to hold him liable. Therefore the waiver did not in any way change the legal obligation as to him. The effect of, and necessity for, his endorsement was merely to give the note negotiability. In addition to this, it appears to have been mere inadvertence in placing the stamp over his name. It was not necessary to protest as to him, and the bank did not intend to enter a waiver as to him, and did not do so. Therefore, the Court committed no error in admitting the notes in evidence, and assignments 10, 11 and 12 are not good.

IV.

ERRORS 13, 14, 15 AND 16 AS TO EXCLUDING EVIDENCE OFFERED BY PLAINTIFF IN ERROR.

The issues offered by plaintiff in error by his special pleas upon which he sought to introduce the proof excluded, was that the notes sued on as to him were accomodation paper. That after the Bank had knowledge of the fact, for a valuable consideration, it extended the time of paying said notes for a definite period beyond the date of maturity without plaintiff's knowledge or consent, and also waived its right to have said notes paid out of property conveyed under a deed of general assignment.

The witness, Crudup, who carried on the negotiations with the Bank, proves there was no agreement for an extension of time, other than as appears in a certain defeasance executed by Theodore Richmond.

See Crudup's testimony, Rec. page 38.

Thus the contract for extension was, according to Crudup's testimony, reduced to writing, and is found on page 18 of the record. It was the duty of the court to construe this contract. It shows on its face, that it gave no extension of time and was, correctly, so construed. Therefore, the court was well warranted in holding that unless it was shown or could be shown that the Bank had extended the time of the payment of these notes, the matters sought to be proved was immaterial and irrelevant.

We admit the doctrine, that an extension of time of the payment of a note beyond maturity, without the consent of a surety, will release the security. But in order to work such result, the contract of extension must be for a valuable consideration; be for a definite and certain time, and binding, and in some way change the original contract to the injury of the surety.

See Tiedeman on commercial paper, Secs. 424 and 425.

McLemore vs. Powel, 12 Wheaton, (U. S. Reports), page 554.

Now if Plaintiff in error by his own proof showed this doctrine could not be invoked, the court committed no error in excluding evidence that could have no bearing in the absence of this material and absolutely essential fact.

The papers excluded from the jury in no way tended to establish this fact, and were wholly immaterial to any issue to be passed upon by the jury, in the absence of this material fact.

For the same reason the 17th assignment, that the court refused to charge, that a failure to bring a suit was a circumstance tending to show an agreement to delay to be looked to by the jury, is not good. The case as made out for plaintiff in error by his own witness, Crudup,—Record, page 38—depended upon the construction to be given a certain written instrument,—the Richmond defeasance—Record page 18. The construction correctly given that instrument by the court, being directly contrary to Plaintiff Gordon's contention, it seems to us, it would be use-

less, if not idle, to have the jury speculating about circumstances and presumptions. But the creditor is under no obligation to sue the principal debtor; and his delay to prosecute, however much prolonged, would not invoke any violation of the rights of sureties.

In the absence of a statute, the sureties cannot even compel the creditor to bring suit against the debtor.

Tiedeman on Commercial Paper, sec. 424.

Therefore no presumption, or suspicious circumstances, arises from a failure to sue.

The surety is not without a remedy. He may bring a suit in his own name against his principal to indemnify himself.

The fact that Crudup & Co. may have attempted to make another trust deed, changing the rights of creditors secured under a general assignment, and attempted to make other disposition of property contained in the general assignment for the benefit of creditors, as appears from the papers offered in evidence set out on pages 18 and 24 and following pages of the record, could not affect the Bank's rights. As appears from the second assignment made by Crudup & Co. to R. P. Woodward, beginning on page 18 of the Record, the defendant Bank was no party to it, and by said paper, after having made the general assignment beginning on page 24 of the record, Crudup & Co. could make no conveyance that would affect the interest of the Bank under the general assignment. It was the duty of the court to construe these two papers, and if they did not tend to prove the proposition affirmed by plaintiff in error, they were not legitimate proof, and there was no error in excluding them from the jury, because irrelevant.

It has been judicially determined that the second trust deed to Woodard did not affect the rights of creditors under the first. These very same two papers were construed by U. S. District Judge D. M. Key, and he held the second deed of trust to Woodard an absolute nullity as to the creditors provided for in the first general assignment; that by the first general assignment, Crudup & Co. had parted with all their interest in the property and could not subsequently make any conveyance affecting the rights of the beneficiaries under the general assignment.

Comer vs. Tabler, 44 Federal Reporter, p. 467.

Therefore plaintiff in error cannot show by these two papers as he sought to do, that, the defendant bank had released securities of the principal on the notes sued on, and there was no error in the lower court excluding these papers from the consideration of the jury.

All of this is put upon the hypothesis of the plaintiff in error standing in the relation of surety to the Bank which, however is not conceded, except for the sake of the argument, and to present the case from plaintiff's standpoint.

But we most earnestly insist, that the plaintiff in error is not entitled to any of the rights and denfenses of a surety, as against the defendant Bank, and for this reason the rulings of the Circuit Court were all correct.

From the face of the notes sued on, plaintiff in error was the principal, and primarily liable even before Crudup & Co., as between him and Crudup & Co. The Bank discounted the paper without knowing anything about it other than as its face indicated.

According to the great weight of authority in the American State Courts, the maker cannot under such circumstances change the terms of the written contract, and entitle himself to the rights of a surety.

Tiedeman on Negotiable Paper sec. 422.

In this controversy, the Federal courts early arrayed themselves upon the side of the majority, and have universally held that the maker of such paper as sued on here, could not for the purpose of setting up the defenses of a surety, show by proof, in the face of the written contract, that he was an accommodation endorser or surety. And that though the creditor may have known that he was surety, still the creditor has a right to treat and hold him as he has made himself appear in the paper he has voluntarily signed. It is said, "The surety who obligates himself "as principal, has no more right to vary his contract and show "himself to be a surety, than the creditor would have to vary "the terms of the contract and show one who signed it as surety "was not surety but was a principal."

These propositions are all clearly and fully set forth in the case of

Sprigg vs. Bank, 10 Peters, p. 257.

where the case is considered on the law side of the docket.

Afterwards it was carried to the Supreme Court from the equity side, and the doctrine reaffirmed, and to our minds these cases are conclusive of every defense offered by plaintiff in error.

See Spriggs vs. Bank of Mount Pleasant, 14 Peters, p. 201.

The equity and justice of this case was reached in the Circuit Court, and we respectfully insist, the judgment of the lower court should be affirmed.

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